- Skyboxes: Why radicchio and Redskins don't mix
- Morton Mintz says adios to laissez-faire
- Morris Fiorina on David Mayhew; Thomas Edsall on the politics of sects

The Washington Monthly

DECEMBER 1991/$3.50

THE ORGANIZATION WOMAN

You've come too far, baby

by Katherine Boo

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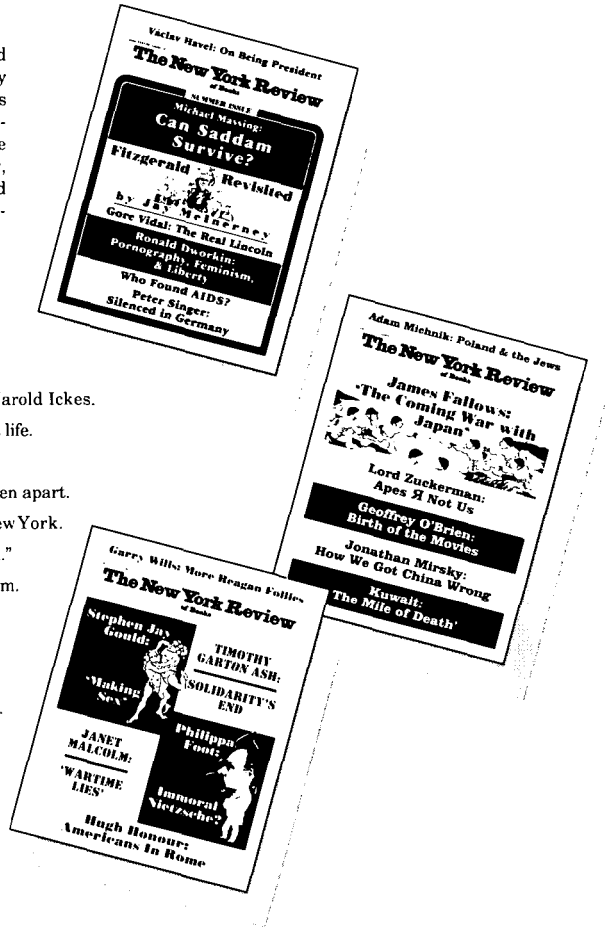

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The Washington Monthly

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LETTERS

English muffin'

I was astonished to read—in flat contradiction to my own experience and that of my friends and family still in England—Nancy Watzman's assertion ["Socialized Medicine Now—Without the Wait," October] that the British National Health System deprives patients of "any say over who peers in their ears, prods their stomachs, or cuts them open." Until emigrating from the U.K. in 1962, I certainly chose my own doctor, and family and friends still in England continue to choose theirs.

The National Health Service is by no means perfect, but having experienced both "socialized medicine" in the U.K. and "commercialized medicine" in the U.S., I find that the main differences are the greater influence of the general practitioner in the U.K. (definitely an advantage), the method of payment, and the basis of rationing medical care. It has always seemed to me that since resources are limited, it is more equitable to ration medical care on the basis of medical considerations—making sure that everyone can obtain basic medical care, even if those wanting elective procedures may have to wait—as is the case in the U.K., rather than the U.S. style of rationing medical care on the basis of financial considerations. I have found the quality of medical care about the same in both countries. As for "consumer misery," I have heard many more complaints about the U.S. health care system, if such it can be called, than I ever heard or hear about the British system.

By all means, let us use and improve the Canadian system as the basis of our national health system, but is it too much to ask that U.S. advocates and opponents of health care reform stop bolstering their arguments with false charges against the British system?

BARBARA FORREST
Philadelphia, Pennsylvania

Nancy Watzman's article is the definitive work on the subject. What we need to do now is get the message out.

CHARLES SULKA
Washington, D.C.

Safeway sex

I was quite disturbed with Susan Threadgill's "Who's Who" item casting doubt on Secretary of State James Baker's personal life in your October issue. To drag out such an issue in the manner in which she did was something we should leave to the gossip rags at the supermarket check-out counters. *The Washington Monthly* should be above all this.

MARVIN F. WEISSBERG
Arlington, Virginia

Who's to blame

I have always enjoyed your "Who's Who" column and am happy to see Susan Threadgill spicing it up a bit with background information not normally available to the public. There is one entry in your September issue that needs correction. It deals with General William Odom and whether or not he was a leaker to or a mole for the Reagan-Bush people concerning the Iranian hostage situation when he was with the Carter administration's National Security Council.

At the end of 1980, as the Carter White House was coming to a close, Bill came to me with a question. "You're with the Republicans, maybe you can help," he began. "Last May, when I was still a colonel, I could find out everything. Now that I'm the lowest-ranking general, I'm perceived as political and no one tells me anything. Rumor has it that when the Reagan people come in next month, I'm going to be banished forever because of my loyalty to the Carter people. I know all the Army guys and I think I'm all right with them, but I don't know any of the incoming Republicans. Are they vindictive?"

I called Jack Marsh, whom I had known since the Ford administration and who had been announced as Reagan's choice for Secretary of the Army. He suggested that I call General Edward C. Meyer, the Army chief of staff. Meyer was terse. "You tell Bill not to move. I will personally come and get him," he said.

Thereafter, in rapid succession, General Odom became the deputy chief of staff for intelligence, chief of army intelligence, and director of the National Security Agency. This is a progression that could only occur by virtue of Bill's talent. Political payoffs, by their very nature, are not progressive.

ANTHONY J. HOPE
Washington, D.C.

Barber chop

I have found *The Washington Monthly* to contain thoughtful expressions of liberal viewpoints on a variety of subjects. James David Barber's piece ["Empire of the Son," October] on the imperial presidency was a glaring exception in several respects.

It suggests that Desert Storm was not "worth it by any meaningful standard" because its aftermath has been far from perfect (a real surprise in the Middle East). This specious argument could be applied to prove any war effort not worthwhile. The Allies should never have fought the Axis because the end results were tens of millions dead and wounded, the creation of totalitarian regimes over most of Eurasia, including all of Eastern

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Europe, and the perpetual terror associated with the nuclear arms race.

Like other wars, Desert Storm and its aftermath should not be evaluated against anyone's highest hopes or even against the status quo ante bellum. The significant comparison is to what the situation most likely would have been without the war. Maybe economic sanctions alone would have made Saddam a new man who would cease to be a threat to the geopolitical security of his neighbors and the economic security of the industrialized nations. Or maybe he would have used cash generated from Kuwaiti oil to strengthen his conventional, nuclear, and chemical weapons along with his influence in the Arab world until he became an immediate threat to Israel's security. As I believe the vast majority of Americans recognize, the real question was whether to stop Iraq now with Arabs on our side or join Israel in a fight against a much stronger Iraq allied with other Arab nations several years later.

Another amazing point in Barber's article is that he suggested George Bush took us to war in defiance of the War Powers Act. The author seems to forget that Congress did vote to authorize force and that Bush did wait until after that vote to commence hostilities. My guess is that Barber is really a conservative and an ardent supporter of Bush and Desert Storm who is trying to caricature his opposition. If not, his article is an insult to the intelligence of liberals and conservatives alike.

PHILLIP R. McDONALD
Sterling, Virginia

Book 'em

I've been interested in your ongoing material about the New York Public Library (NYPL), although I agree with the NYPL that the city should not be left off the hook on the question of paying for library service. But there is a side to the NYPL question that you have overlooked: How well do they spend the money they get? Consider the Queens Borough Public Library (QBPL), which serves nearly 2 million people. QBPL circulates 6.76 books per capita at a cost of $3 per book circulated; NYPL circulates 3.35 books per capita at a cost of $5.64 per book circulated.

Lest it should be thought that this difference has a sociological explanation, it should be noted that the three socially disparate boroughs served by NYPL, taken together, have a very similar profile to that of Queens alone.

I think the explanation for these differences may be found on the boards of the respective libraries. NYPL has a self-perpetuating board made up of folks sometimes described simply as "Brooke Astor's Friends." Almost all of them live in the suburbs or on the Upper East Side. Not surprisingly, almost all of them are far more interested in the Research Library at 42nd Street (where they meet and go to their fundraising affairs) than in circulation in local branches in Staten Island or the Bronx.

QBPL's board is selected by the mayor. By law, at least 14 of its 19 members must come from community boards. Although its members reflect the differing political needs of various mayors, they are upper-middle-class activists in their various communities and almost all are users of a local library branch.

The Washington Monthly

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Subscription rates: U.S. and possessions: one year, $33; two years, $61; three years, $88. For Canadian and foreign subscriptions, add $7 for surface delivery; air mail delivery add $32. Back issues, $4.50. Send correspondence concerning subscriptions, undelivered copies, and changes of address to 1611 Connecticut Ave. NW, Washington, DC 20009. For change of address, please provide six weeks' notice and include old address label. The Washington Monthly is indexed in the Book Review Index, Political Science Abstracts, Public Affairs Information Service, the Readers' Guide to Periodical Literature, the Social Science Index, and Ulrich's International Periodicals Directory and may be obtained on microfilm from University Microfilms International, Ann Arbor, MI 48106. Reprints of articles are available to individuals or schools at $1.50 each (prepaid). For reprint rights for all or part of an article call Elliott Beard at (202) 462-0128. Published monthly except combined July/August and January/February issues by The Washington Monthly Company, 1611 Connecticut Ave. NW, Washington, DC 20009 (202) 462-0128.

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ISSN 0043-0633. Postmaster: Send change of address to The Washington Monthly, 1611 Connecticut Ave. NW, Washington, DC 20009. Second class postage paid at Mechanicsburg, PA. Unsolicited manuscripts must be accompanied by a stamped, self-addressed envelope.

By the nature of the appointment processes of the two libraries, you have one board that has fostered the creation of a nationally famous research library while neglecting the needs of local communities, and another board that has fostered the highest circulation of any American library (although Chicago, LA, and NYPL all serve 50 percent more people than does Queens) with no comparable research institution. I think this is another demonstration of the importance of obscure governmental processes (who thinks about library appointments?) to major social outcomes.

JIM CHAPIN
Jackson Heights, New York
Mr. Chapin is vice president of the Queens Borough Public Library's Board of Trustees.

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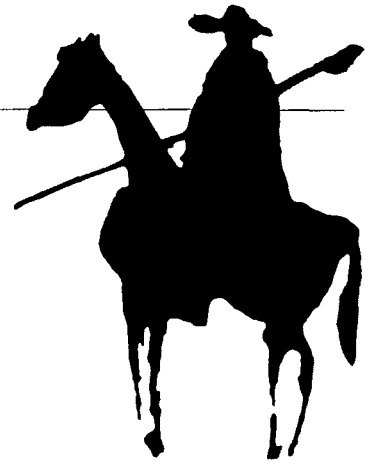
TILTING AT WINDMILLS



The saddest aspect of the Thomas hearings was the failure of the Republican senators to even seem interested in finding the facts as distinguished from making partisan points. The senators had a duty to determine the truth of Anita Hill's accusations. Yet I cannot recall a single Republican question that was designed to discover factual support for Hill's version of the story. Do senators have to behave this way? Of course not. All you have to do is remember Republican Warren Rudman and Democrat Lee Hamilton during the Iran-contra hearings or Republican Howard Baker and Democrat Sam Ervin during the Watergate hearings. None of these men let loyalty to the party keep him from making a reasonable effort to find objective truth. Remember how Baker kept asking, "What did the president know and when did he know it?"—a question that surely offered little comfort to Richard Nixon. . . .

As a born-and-bred Democrat —both my parents were active party members—I am not immune to partisan sentiments. I often find myself instinctively favoring liberal causes and liberal candidates. I understand why Republicans are similarly inclined to favor conservative causes and candidates. But something terrible has happened in recent years to transform these understandable feelings into a politics of self-righteous, one-sided attack in which no effort is made to consider the other fellow's points, no matter how valid they may be.

What has happened to the spirit manifested by FDR, certainly no saint when it came to partisanship, when he named two prominent Republicans, Frank Knox and Harry Stimson, to his cabinet in 1940? Or that displayed by Dwight Eisenhower when he nominated William Brennan to the Supreme Court? When I worked for the Peace Corps in the sixties, my boss, Sargent Shriver, did not hesitate to hire outstanding Republicans such as Lewis Butler and William Saltonstall. When I served in my state legislature, there were several intelligent and concerned Republicans whose arguments I always listened to with respect.

Part of the problem is the success enjoyed by the Lee Atwaters. Another factor may be the explosive growth of the legal profession in the past 30 years and the adversarialism it fosters. Finally, there is the preponderance of single-issue lobbies such as the NRA, which have made issue adversarialism a greater threat to the republic than party partisanship. But whatever the cause, the time has come to restore civility and objectivity to our public discourse. We face problems too serious for us to scorn facts or legitimate arguments simply because they don't fit our case. . . .

Those whose patience was strained by the interminable jury selection process in the William Kennedy Smith trial might consider California's Proposition 115, which took jury selection out of the hands of the lawyers and gave it to the judges. The result is that a judge can empanel a jury in as little as an hour. Speed isn't the only reason the California system is better. A vast jury selection industry has been developed in recent years, which gives an unfair advantage to the side that can afford the best psychologists. . . .

Let's say you were unpersuaded by our pitch for a modified version of the Canadian health plan ["Socialized Medicine Now—Without the Wait," October] and unmoved by Pennsylvania's tremendous response to Harris Wofford's call for universal health care—costs too much, you shrug. Then you should ponder this report from *The Washington Post* about a study commissioned by the Robert Wood Johnson Foundation:

"The United States could save $241 billion on health care costs the first year and $4.2 trillion over the next decade if it switched to a Canadian-style national health insurance system."

We'll take just part of the savings. Some of them should be invested in repairing defects of the Canadian system such as overly long delays for operations for painful, if not emergency,

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conditions. But what the study makes crystal clear is that plenty of money exists to finance the improvements we would want to make in the Canadian system. . . .

Getting more or better government services sometimes requires paying more money—e.g., expanding Head Start. But as this magazine never tires of pointing out, the problem is often not a lack of money but a lack of competence. The District of Columbia, for example, spends $26 per capita per year on its ambulance services—$11 more than any other major city. But as any Washingtonian will tell you, the most notable skill of local ambulance crews is an uncanny knack for going to the wrong address. . . .

The Democrats may have been less partisan than the Republicans in the Thomas hearings, but they were also, as practically everyone noticed, more inept. One opportunity after another was blown. For example, it would have been simple to request a reading from the record of Hill's testimony that would have exploded Senator Arlen Specter's charge that she had committed perjury. But as a former trial lawyer, I was driven most crazy by the Democrats' failure to follow up on the question of Thomas's interest in pornography.

As I watched emotions register on Thomas's face during his testimony, it seemed dramatically clear to me that the pornography question was the one he feared most. Another tipoff was that he tried to exclude the possibility of such questions. Witnesses often do this, trying to define issues in such a way as to make irrelevant any inquiry into facts they don't want to disclose. Take Thomas's statement Friday night, after Hill had testified:

"I am not here to be further humiliated by this committee or anyone else, or to put my private life on display for prurient interest or other reasons. I will not allow this committee or anyone else to probe into my private life."

The only time pornography came up was when Senator Patrick Leahy asked Thomas, "Did you ever have a discussion of pornographic films with Professor Hill?"

> THOMAS: Absolutely not.
> LEAHY: Have you ever had with any other women?
> THOMAS: Senator, I will not get into any discussions that I might have about my personal life or my sex life with any person outside of the workplace.

Leahy then threw away the ball game by saying, "Please don't misunderstand my question, Judge. I am confining it to the workplace."

What Leahy failed to grasp was that, although the workplace element was necessary to establish a record of sexual harassment in the office, it was not necessary to establish a prior interest in pornography. And a record of such interest would have been highly relevant to the credibility of Anita Hill's testimony. . . .

Another Democratic failure was Senator Biden's repeated assertion that the burden of proof rested with Hill. I nodded my head when he said this—it was the sensible, respectable line—until a friend of mine pointed out that it wasn't a courtroom. The senators were making an affirmative decision about a man seeking office, not passing judgment on someone accused of a crime and facing prison. *Any* doubt is

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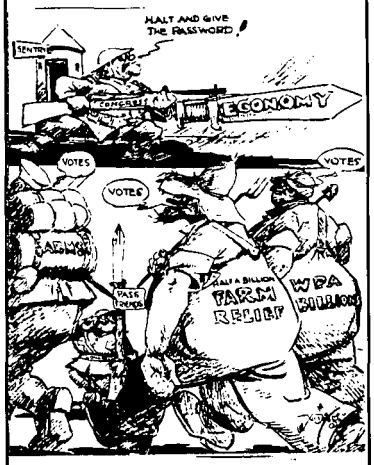

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important—you don't have to have conclusive evidence. Had Biden enunciated a different, higher standard for approving Thomas, a lot more senators would have felt a lot more comfortable voting against him. . . .

Speaking of the burden of proof, did you know that if you fit the profile of a criminal, law enforcement agents can seize your cash, car, or other property without even charging you with a crime? Then *you* have to sue to regain possession of what you owned. You have to prove you are innocent and the cases often take months or even years to try.

Andrew Schneider and Mary Pat Flaherty of *The Pittsburgh Press* recently investigated the results of this law and uncovered 510 cases of injustice, including the following:

"Willie Jones, a second-generation nurseryman in his family's Nashville business, makes twice-a-year trips to Houston to buy flowers and shrubs. He takes cash, which the small growers prefer.

"But this time, as he waited at the American Airlines gate in Nashville Metro Airport, he was flanked by two police officers who escorted him into a small office, searched him, and seized the $9,600 he was carrying.

"A ticket agent had alerted the officers that a large black man had paid for his ticket in bills, unusual these days. Because of the cash and the fact that he fit a 'profile' of what drug dealers supposedly look like, they believed he was buying or selling drugs.

"The officers told Jones he was free to go. But they kept his money—his livelihood—and gave him a receipt in its place. No evidence was ever produced. No charges were ever filed." . . .

If you don't think we have a monopoly problem in America today, all you have to do is look at how the major airlines are bilking the customer at the hub airports they occupy. For example, TWA recently offered special discount coupons for many of its flights. Where did the discounts not apply? St. Louis, the hub TWA dominates. . . .

What the *Monthly* calls the Slot Syndrome is the persistence of a job, or slot, on the government personnel rolls long after its original program has either disappeared or been reduced to the point where this job could easily be combined with one or two other jobs whose responsibilities have been similarly reduced. I recently asked a high federal personnel official if anyone in the government was dealing with this problem. His answer was no. Now you understand why the Department of Agriculture remains overstaffed even though the number of farmers has declined dramatically. . . .

A recent study summarized in *The New York Times* says the way to save New York is not by giving subsidies to manufacturers and companies that construct office buildings, but by "reinforcing the city's role as a center of brainpower and talent." This sounds right to me, although the *Times* account of the report did not mention the four factors that made the city attractive when I was a student there in the late forties. Plenty of cheap French and Italian restaurants like the Champlain and the old Barbetta's, where you could eat a good meal for $2 to $3; cheap balcony tickets ($1.20 to $2.40) for theater, dance, concerts, and opera; cheap, safe

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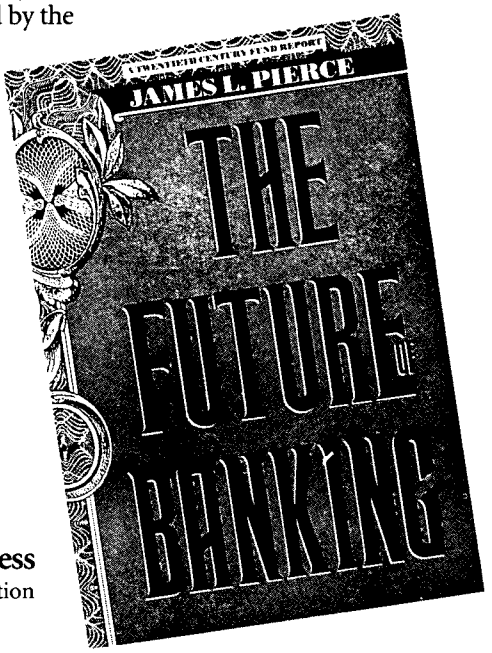

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transportation (10 cents for the subway and no fear about riding at 4 a.m.); and cheap rents for rooms and apartments. Even then the cheap rent wasn't easy to find, but it was still gettable—I lived in apartments that rented for less than $65 per month in Greenwich Village, on West 92nd, and at 50th and 2nd.

All these things combined to lure thousands of the most brilliant young people in the country to New York. Sometimes they produced great art—as they certainly did in dance and theater in the New York of that era—and sometimes they found other outlets for their creativity. But the certain result of all that talent was a vibrant economy for the city.

I suspect that high rent is the number-one killer of youthful creativity. Indeed, not only in New York City but in Washington and other major cities, far too many of the young are forced by the cost of living space to forsake work that is interesting but unremunerative or give up the kind of goofing off that is intellectually and spiritually enriching but, of course, also unremunerative. . . .

Another reason New York may be beyond saving is the city's bureaucracy. Do you know what an expediter is? He or she is someone hired to get permits for construction and renovation by figuring out, according to Sarah Bartlett of *The New York Times,* "which lines to stand in and what will satisfy a particular building examiner."

"That's right," Bartlett continues. "The process of getting a building permit is considered so complicated and time-consuming that an entire industry has been spawned to deal with it, even to the point where expediters hire their own expediters."

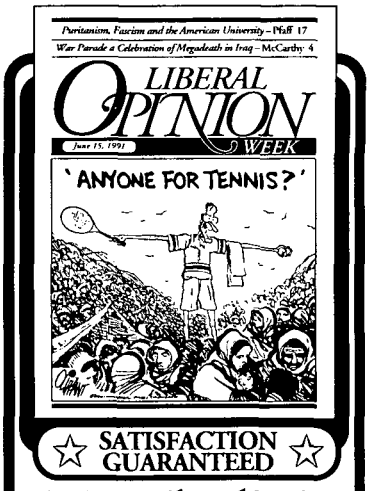
Does Bartlett's article strike a faint chord in your mind? Remember *The Washington Post* article I cited not long ago about how affluent Washingtonians were hiring standers-in-line at the local passport office? The bureaucratic state serves the bureaucrats first. But next to them it serves the rich, who can afford to hire all the expertise that dealing with the bureaucracy requires. . . .

Speaking of bureaucrats, are you aware of the righteous cause currently embraced by the Senior Executives Association, the elite of the civil service? It is to get frequent flyer credits given to them personally, even though we the people pay for the travel that gains the credits. Currently the credits are used to decrease the deficit by paying for other government travel. . . .

And speaking of bureaucracy again, did you know that the Federal Deposit Insurance Corporation and its affiliate, the Resolution Trust Corporation, have been paying $177,000 for wall hangings in their offices, not to mention $800 each for chairs. No wonder they keep telling us the bailout cost is rising. . . .

If you've got a yen for immortality, you can forget about having your corpse frozen. Not only is there the unsettling prospect of global warming, but there is clearly a better way: Move to Los Angeles and get elected to the City Council. There, members may die but their motions live on.

Due to a quirk in city laws, motions remain current until they are passed or defeated or otherwise disposed of. "There are more than 1,200 motions pending before the City Council," reports the *Los Angeles Times*, "with hundreds more than 5 years old



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and dozens more than 10 years old." In October, the council passed a motion filed by Howard Finn in 1983. Finn departed this world in 1986. . . .

A little-known talent of Harris Wofford is literary skill. Those who have read his book *Of Kennedys and Kings*—an excerpt of which appeared in these pages in our July/August 1980 issue—know he is an excellent writer. I have always suspected that Harris was allowed to leave the White House in 1962 because his talents as a speechwriter made him a threat to Theodore Sorensen, JFK's number one ghost, who was also said to have conspired to oust another of his speechwriting rivals, Richard Goodwin. But Sorensen may have been innocent in Wofford's case. Harris, who is an otherwise wonderful man, is occasionally a bit long-winded, and Jack Kennedy's impatience with the excessively discursive was legendary. . . .

The House has shut down that nice bank that kept cashing checks even when members didn't have a dime left in their accounts, but, as a recent Knight-Ridder story points out, a few other congressional perks remain.

➤Garage parking on Capitol Hill that costs private citizens $1,620 per year is free to congressmen.

➤At National Airport, the public spaces closest to the terminals —just on the far side of the free ones provided to Congress—cost $20 a day.

➤Senators have free use of indoor tennis and basketball courts that private clubs charge $1,500 a year for.

➤Congressmen get free health care that costs the taxpayer $2,794 for each member. And this doesn't count the additional free care available at both the Walter Reed Army Medical Center and the Bethesda Naval Medical Center.

➤Studios where senators can produce videotapes of themselves to send to television or radio stations cost the taxpayers $17,000 per member and give incumbents an incalculable advantage over challengers, who not only have to pay for such facilities but rarely enjoy the convenience of having the studio just a few steps away.

➤A club sandwich in the subsidized House and Senate dining rooms costs more than one-third less than it does at the closest comparable restaurant, which also happens to be considerably less spacious than the congressional restaurants.

➤Congressmen (and executive branch VIPs) stay at bargain prices at four luxury resorts operated by the National Park Service. Here's how they were described in another recent article about perks from Scripps-Howard: "A dream vacation for many Americans would be a hilltop house in the U.S. Virgin Islands only a 100 yards or so from the white beaches of Little Cinnamon Bay.

"The same can be said about the former lightkeeper's cottage on pristine Bodie Island off Nags Head, North Carolina, or the secluded log house with a stone fireplace on the shores of Jackson Lake in the Grand Teton National Park, or the quiet cabin in the Blue Ridge Mountains within a stone's throw of two trout streams."

The three-bedroom Little Cinnamon house sits on a secluded 22-acre plot and has a private beach. Congressmen pay $90 per day for up to four people. They would have to pay between $310 and $510 at nearby private resorts. . . .

Speaking of Congress, Morris Fiorina, whose review of David Mayhew's new book appears on page 53, is the author of one of political science's more penetrating insights into behavior on Capitol Hill. He figured out why Congress tolerates an incompetent bureaucracy: Members know that a major factor in their reelection is the political credit they earn when they straighten out bureaucratic errors on behalf of their constituents. In so doing, they may earn the lifetime loyalty of each voter affected, and quite probably of his family and friends as well. . . .

Mayor Sharon Pratt Dixon left Washington on November 8 for what *The Washington Post* described as a "five-day business trip." Where was she going? Cancun, Mexico and Naples, Florida. She had spent November 1–3 in Pasadena, Calfornia. On November 4, she traveled to New York to receive a *Glamour* "Woman of the Year" award. She seems so sensible and nice, but with the city in terrible trouble, this behavior is frivolous to the point of stupidity. . . .

A few years back, Maury Maverick Jr., a columnist for the *San Antonio Express News* and son of a great liberal congressman, published a breakdown by religion of the men who died in the bombing of the Marine barracks in Beirut in 1983. A disproportionately large number of Catholics and Baptists was included, as was a disproportionately small number from more affluent religious groups such as the Episcopalians, Unitarians, and Jews. Now comes the list from the Gulf war, again compiled by Maverick, and it tells the same depressing story. Three Episcopalians, one Unitarian, and no Jews were listed among the 375 Americans who died. . . .

—*Charles Peters*

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Soft-Boiled Regs

What happens when our corporate cops stop walking the beat

by Sheila Kaplan

Back in the days when the Occupational Safety and Health Administration (OSHA) kept itself busy by drafting directives specifying the height of the nation's fire extinguishers and the width of its toilet seats, it was easy for voters to be taken in when Ronald Reagan bemoaned the total cost of all federal regulation—"all waste," as he once put it, "due to regulatory overkill." It was easy for them to chuckle when he took a lighter tack: "If the federal government had been around when the Creator was putting his hand to this state, Indiana wouldn't be here. It'd still be waiting for an environmental impact statement."

These days, though, it's hard to live with the consequences. Maybe fire extinguishers come in all shapes and sizes, but so do the tumors in kids who grow up near areas like the Brio refining site in Texas, where Reagan's Environmental Protection Agency (EPA), less interested in freeing the hand of the Creator than that of big business, settled for a face-lift rather than an aggressive cleanup of toxic wastes left by corporate polluters. In the late eighties, outrage over failures like Brio and the $500 billion S&L collapse revealed that Americans have a slightly more complicated view of regulation than Reagan may have thought: They might have wanted government off their own backs, but they sure as hell wanted it to stay on the backs of those who might steal their savings, wreck their health, or maim their kids.

In fact, it's astounding in retrospect that voters let Reagan get away with attacking all regulation, as though one could simply wipe the books clean. You don't have to be Ralph Nader to understand that people need rules. Just as laws define the bounds of society (you can't shoot your enemies), regulations define the bounds of the marketplace (you can't sell

Sheila Kaplan is a senior reporter at Legal Times. *Research assistance was provided by Eric Konigsberg.*

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nuclear bombs). And just as police are supposed to nab criminals, regulators are supposed to nail violators of market rules.

In practice, these theoretical distinctions become meaningless. Whether you kill somebody by driving recklessly or by marketing a deadly drug, you should wind up in prison just the same. Somehow, though, as we all got tough on crime in the eighties, cops became pop culture heroes while regulators became pests—until one day Americans looked up and realized the Charles Keatings had eaten our lunch.

Maybe this explains why, when federal marshals seized 2,000 crates of Citrus Hill Fresh Choice orange juice, the crackdown was such big news, hyped by the networks and *The New York Times*. But while the administration has come down hard on the orange juice menace and gotten great publicity as a result, it is quietly letting much greater hazards go unchecked. Yes, there have been some tentative steps toward reregulation. The National Highway Traffic Safety Administration has accelerated the implementation of rules to make light vans and trucks safer. OSHA and the EPA have taken more enforcement actions against the most blatant corporate crooks. The Federal Trade Commission is looking into business mergers more carefully. And the Food and Drug Administration (FDA) has finally cracked down on the generic drug industry.

But such accomplishments have been piecemeal, lacking central direction. As *Newsweek* reported last year, after reading newspaper accounts of business fears over a possible new regulatory crackdown, Bush sent a note to John Sununu: *What's going on?* The free-market ideologues in the White House—in particular Sununu and Dan Quayle, operating through his Council on Competitiveness—have tried hard to undercut any push in the ranks toward reregulation. Indeed, the vaunted orange juice assault itself was less the result of regulators' concern for little kids than of a concerted lobbying effort by Citrus Hill's competitors. A look at some of the other deeds behind the words of this administration reveals that, when it comes to regulation in the Bush era, it's pretty much business as usual. The result is a growing threat to public health on numerous fronts, from poison in our food to hazardous wastes on the railways to plain old pollution in the air and water.

Outnumbered

The numbers alone provide telling insight into the decayed state of America's regulatory infrastructure. Despite the fact that the crisis in the commercial banks has become front-page news, each Federal Deposit Insurance Corporation examiner is, on average, responsible for ensuring the sanctity of *one billion dollars* in Americans' savings. At the Federal Election Commission during the 1990 elections, 23 weary analysts were responsible for spotting any shenanigans in 55,000 10-page campaign finance reports. And a grand total of 300 federal watchdogs guard the $2 trillion held in 730,000 pension plans nationwide —the nest eggs of some 56 million Americans. But numbers give only part of the story. The most important question is not how many regulators there are, but what those regulators are *doing*. The answer is that in many vital areas, they're doing nothing at all.

Consider the federal government's record on regulating toxic chemicals and pesticides, which end up in food and groundwater. The statistics are frightening. Out of the hundreds of pesticides and other chemicals used, only a handful—fewer than 10—have ever even been reviewed. Although the food industry usually tries to block any such legislation, Congress managed to order the EPA to check all pesticides and chemicals first in 1972 and again in 1988. The EPA simply never complied. These unchecked chemicals remain on the market, and the dangers they may pose remain an open question.

Even when the hazards of a pesticide are well documented, the Bush administration has proven less than zealous in restricting its use. The case of parathion provides a good example. On the market since the late forties, parathion was originally developed by the Nazis as a weapon in World War II and subsequently put to use killing bugs on plants. It has long been known to cause chronic neurological and behavioral problems—oh, and kill people, too. Under fire from Congress, migrant worker advocates, and farm groups, the EPA finally restricted it. Sort of.

EPA regulators bragged about the breadth of the ban, whereby the pesticide industry agreed to discontinue 80 percent of parathion's uses. But the EPA didn't bother to mention that 80 percent of the *uses* of parathion only constitutes 25 to 50 percent, max, of the *volume*.

The Mumbles fumble

Scratch an eighties regulatory failure and you generally discover that it was based on trusting the industry involved to police itself. For example, recall the train derailment and chemical spill that poisoned 45 miles of the Sacramento River in northern California last July. The nastiest agent unleashed in the spill was metam-sodium, a pesticide applied to soil before seeds are planted to strip away weeds, insects, and microbes. When mixed with water, metam-sodium produces hydrogen sulfide gas and other dangerous compounds. But because the EPA does not classify

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metam-sodium as a hazardous material, neither does the Department of Transportation. The result in this case was that train personnel and local police and fire officials had no clue how to handle the toxic spill.

Why did the EPA miss this danger? Because it relied on the kindness of businessmen. At an October hearing on pesticide safety, Victor Kimm, the EPA's deputy assistant administrator for pesticides and toxic substances, said that agency staff members didn't know the chemical was hazardous because they hadn't read two reports submitted in 1987 by the company that makes it. Why not? Because, according to Kimm, the company "did not follow the recommendation in the 1985 rule to identify the submissions as 6 (a) (2) data"—in other words, hazardous to human health or the environment. Imagine Dick Tracy saying he didn't notice what Mumbles and Pruneface were up to because they didn't fill out the proper forms. A subsequent submission by the company was properly marked, but Kimm says his staff failed to pick it up. In defending his agency, Kimm also noted that the pesticide staff was extremely busy, adding that the agency's enforcement authority is so limited that numerous companies have simply refused to allow inspectors to conduct inspections.

This example points up another tremendous danger, the condition of the national transport system. Most of us are familiar with the effects of deregulation on the airline industry; it has not only produced great concentration in the industry but has overtaxed both air traffic controllers and aging jets. And as demonstrated by the spill, our railroad system is hardly a model of safety. Although the National Transportation Safety Board has repeatedly said the type of tank car involved in the Sacramento River spill is too weak to hold hazardous materials, a *Los Angeles Times* investigation found that most of the 1.5 million carloads of such materials shipped by rail use precisely those cars. All aboard?

Fowl play

In theory, trusting a business to police itself can make a lot of sense. After all, if you buy a faulty product from one company, chances are you won't buy from it again. And if enough consumers suffer that experience, or if the problem is dramatic enough to draw media attention, the company will be hit hard financially—a powerful incentive to maintain excellent quality control. But saying we don't need regulators because corporations want customers is a little

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like saying we don't need cops because everyone wants friends. As long as people feel they won't get caught, a yearning for profits and popularity will drive some to commit nasty acts. Just ask Ivan Boesky or Richard Nixon.

Now, it would seem that food inspection would provide an ideal case in which to let the market work its magic—there's little that's more memorable, or attention-getting, than food poisoning. And in practice, the federal government does cede to chicken companies, for example, most of the responsibility for ensuring that your next picnic doesn't turn out like the Jonestown massacre.

But according to the United States Department of Agriculture's (USDA) reckoning, an astonishing 80 percent of all poultry sold in the United States is contaminated with dangerous bacteria. The Centers for Disease Control (CDC) estimate that at least four million Americans become sick and 2,000 die each year from salmonella and campylobacter poisoning, generally from poultry. And these facts have been widely publicized. Evidently, adverse public response hasn't been strong enough to force poultry companies to conduct adequate quality control. (This makes sense: Do you really notice if you buy Holly Farms or Perdue? And even if you do, if you got sick would you blame the poultry plant, the grocery store, the restaurant, or the cook?) And the federal government sure isn't picking up the slack. According to Carol Tucker Foreman, a former assistant secretary of agriculture responsible for meat and poultry inspection, inspectors are supposed to examine chickens by fondling them as they whiz past at a rate of one every two seconds. The National Academy of Sciences says this system simply cannot catch the lethal bacteria and feces that spread through the birds when they are processed.

Rather than revamp the current regulations, the administration has supported the industry's argument, borrowed from the National Rifle Association: Chickens don't kill people, chefs do. The government argues that the answer lies not in the processing plant but on the grill—encouraging consumers to try to catch as much bacteria as possible by washing meat carefully and cooking it thoroughly. But once the chicken makes it into the kitchen, your counter, your knife, your pans, and your hands and anything else they touch will become contaminated.

Like most agricultural interests, the $16 billion poultry industry is cozy with Congress and the administration. The National Broiler Council, its chief lobby arm, regularly makes sizeable campaign contributions—an act that imperils efforts such as those of Senator Howard Metzenbaum to reregulate the poultry industry. Of course, rather than wait for congressional action, the USDA could simply propose tighter regulations. But the poultry industry has friends there, too. People like Lester Crawford, who as head of the USDA's Food Safety and Inspection Services (FSIS) was feted by the industry in places like Hawaii and San Diego. After he stepped down in August, Crawford, who was also the brains behind the proposal to streamline (read: speed up) beef inspection, was rewarded for his devotion with a post as executive vice president of the National Food Processors Association, a trade group for food manufacturers, including companies like Campbell Soup that are subject to poultry inspection.

Although Crawford has left the government, his proposal for inspecting beef—the same approach that has been in place since 1983 for poultry—lives on. It would shift more responsibility for policing the quality of beef to the slaughterhouses. The USDA says this would increase meat plant productivity by some 40 percent, doing more with less by relying on a random statistical sampling plan. According to the Government Accountability Project, which opposes the move, the streamlined inspection system would in effect call for inspectors to check on average only 3 full beef carcasses out of 1,000—as opposed to the 1,000 out of 1,000 that are checked today. Moreover, they'd have a total of 12 seconds to examine each carcass. During the pilot program, whistleblowers said that the proportion of unwholesome beef products earning USDA approval—beef enhanced by tasty items like manure, hair, hide, metal, chewing tobacco, and cactus thorns—rose from 3 percent of carcasses to 24 percent. That's almost *one in four.*

Sleeping watchdogs lie

If a company is willing to let manure into the food it sells, imagine what it's willing to do to its workers. Unlike consumers, workers usually need the company more than the company needs them—they're in much less of a position to vote with their feet. So as one might expect, another broad area crying out for tougher federal policing is the workplace. Although there have been some signs that federal regulators, at least at OSHA, are waking up to dangers on the job, enforcement of basic health and safety rules still lags, a fact tragically highlighted by the Hamlet, North Carolina, poultry plant fire in September. As investigators sifted through the remains of the plant, where 25 people burned to death, the federal government was quick to lay blame. North Carolina inspectors were too lax, declared Gerard Scannell, the federal OSHA chief, who demanded a role in investigating the tragedy. If federal inspectors had been in charge, he implied at a congressional hearing after the blaze, the tragedy could have been avoided.

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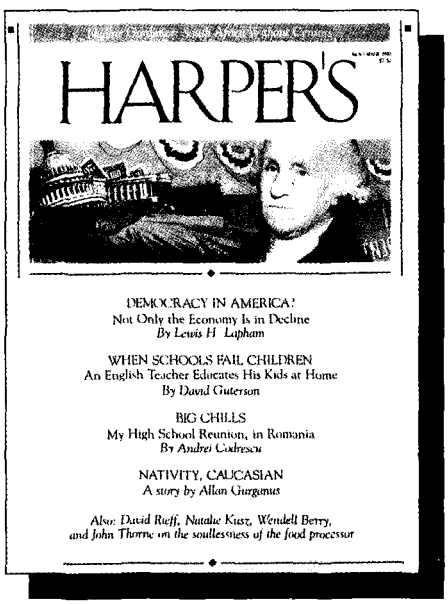

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But not only did the feds approve the state's review of the plant each year without bothering to check on how it was working, the fact is that federal inspectors were inside the hazard-ridden Imperial Foods Product plant pretty much every day. Why didn't they report the dangers?

One clue might be that these inspectors came from the FSIS, hardly known for its skeptical attitude toward the industry. In a September 19 letter to the FSIS's acting administrator, Ronald Prucha, Rep. Charles Rose asked for a record of all correspondence between the FSIS and OSHA, citing recent congressional testimony that five of the eight doors at the plant were regularly locked during working hours.

"None of the three regularly 'open' doors at the plant was easily accessible during the explosion and fire," wrote Rose, who chairs the House Agriculture Subcommittee on Department Operations, Research, and Foreign Agriculture. "None of the eight 'exits' were identified with readily visible, suitably illuminated 'exit' signs . . . apparently in violation of the FSIS Safety and Health Program. . . . I have reason to believe that the very comprehensive safety monitoring, reporting, and enforcement provisions of the FSIS Safety and Health Program were not adequately administered by the FSIS or else corrective action would have been taken to ensure the safety of . . . workers." As one aide to Rose put it, "If they had enforced the safety regulations they had, it would probably have saved some lives."

The agency's response did not exactly clarify the situation. "They sent 20 pages worth of stuff," the aide said. "A booklet on how to sharpen knives, the kind of safety movies people were watching [but] none of the annual safety reports that the USDA was supposed to file. And nothing to indicate the doors were locked. Somebody was in the plant every day and had to know the doors were locked."

The children poisoned at Brio, the millions who get sick each year after eating federally approved chicken, and the workers who died in North Carolina shared at least one thing: an assumption—a priori, as the philosophers would say—that they would be okay. It's similar to the assumption made by anyone who stuck money in an S&L in the early eighties. Certainly, part of the explanation is that people don't walk around expecting the worst. But part of it is that, amazingly enough, they still trust the government, even when regulation is proven over and over to be lax. This is why when companies receive federal approval for their products, they tend to brag about it. *It's okay*, says that purple USDA stamp. *Enjoy your meal.* But perhaps more astonishing, after a decade of antiregulation rhetoric, is that people still assume Uncle Sam is watching out for them even when there's no reason to think so—even when he's not doing a damn thing, and never has.

As soon as Kessler began trying to toughen the FDA's approach, he lost many of his top legal advisers. Where did they go? To law firms planning to cash in when food and drug companies come looking for help.

Take cosmetics. One government survey revealed that 65 percent of Americans think the FDA approves cosmetics and beauty products like hair dyes. They're wrong. The FDA, since long before the Reagan presidency, has left inspection entirely to the manufacturers. Who cares? Well, you should. Research has shown that many chemicals used in cosmetics—such as coal tar in hair dyes and coloring agents in lipstick—are absorbed into the body. What they do once they're there—weaken the kidneys? kill brain cells? cause cancer?—no one knows. But Heinz Eiermann, who until recently headed the FDA's Colors and Cosmetics Division, which keeps records voluntarily filed by companies on their products' ingredients, said last year, "If the American public wants us to be the arbiter of safety, then that cannot be done at the present time."

The important lesson here is not that government testers should be dying their hair and trying on lipstick. It's that consumers *expect* them to be doing so, just as they expect them to be vetting other products that might endanger their health. Americans haven't given up on the basic expectation that their government is making its best effort to protect them, not just from Iraqi madmen, but from domestic dangers as well. This means, given that this is a democracy, that the government shouldn't give up, either.

Incurious George

Footdragging at the White House is the chief obstacle to a renewed effort at smart regulation. So far, Bush seems more interested in the appearance of regulation than the reality—more interested in raising expectations than in meeting them. Hence he dubs

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himself the "Environmental President" and sends out joyful press releases when Congress toughens the Clean Air Act. But he follows up by quietly dispatching squads of White House goons to kill virtually every rule the EPA writes to carry it out. Rep. Ron Wyden, who for the past few years has pitched a bill to regulate cosmetics, doesn't expect any help from Bush. The president's "priorities are a New World Order and not a creative, innovative approach to setting out the ground rules in a number of these domestic areas like health and safety," he says.

Sure, some of Bush's regulators look great, such as William Reilly, the former president of the Conservation Foundation/World Wildlife Fund who heads the EPA, or David Kessler, the doctor cum lawyer cum public health advocate who runs the FDA. But, in general, Bush carefully reins in these mavericks. Although Kessler recently asked Congress for more enforcement power, which he desperately needed, the administration barred him from testifying before Congress in support of his own idea.

The lack of a central direction on reregulation explains why agencies keep finding themselves on opposite sides of the same issue, as in the well-publicized battle between the FDA and the Agriculture Department over nutrition labeling. Similarly, the Nuclear Regulatory Commission wants to ease burial and recycling of products with low-level radioactive wastes, while most EPA staff members oppose the move. And a GAO study found that 10 federal offices believed they did not have the authority to police various chemicals, even though they do, and thus "alcohol, tobacco, and pesticides are all less regulated than they might otherwise be." Sometimes individual agencies even seem divided against themselves: For instance, former Secretary of Labor Elizabeth Dole proclaimed that she wanted to put repetitive motion injuries at the top of her priority list but never issued a standard. This summer, 31 unions petitioned the agency to take emergency action on the issue, but the Labor Department still hasn't acted.

And what the administration's press releases omit is that many of the new reforms have been forced down its throat, the result of legal cases against the government that have bounced back and forth between the courts and the agencies for years. The recent restriction on the use of parathion, for example, followed nearly 10 years of litigation initiated by the Natural Resources Defense Council. OSHA's move to classify formaldehyde as a cancer risk, to label it as such, to train workers to use it carefully, and to monitor their health came more than a decade after the National Institute of Occupational Safety and Health recommended the government do so—and after the United Auto Workers filed suit. Even the recent adoption of sulfur dioxide emission controls at the Grand Canyon's Navajo Generating Station, much touted by Bush, followed a protracted battle against the controls by the Bush administration itself.

See ya later, regulator

Efforts to thwart improved regulation don't always proceed from the top down. Sometimes they come from entrenched bureaucrats. One source close to the FDA's Kessler says that both Kessler and his top aide have been walled off from the day-to-day goings-on of the agency. One recent case in which Kessler seemed out of the loop was the hiring of a Washington law firm to conduct a so-called integrity review of the FDA.

For D.C.'s Shaw, Pittman, Potts & Trowbridge, the assignment was a dream: The firm's lawyers would spend six months interviewing agency officials and combing confidential files, for a whopping fee of $710,558. But the real payoff would come later. What Kessler was apparently unaware of, but his underlings knew, was that the law firm lobbies for RJR Nabisco and, through a subsidiary lobby project, for Nutrasweet and its parent firm, Monsanto, as well as other businesses that are heavily regulated by the FDA.

"We view this as an opportunity to do something that is, frankly, professionally rewarding," J. Thomas Lenhart, a partner with the firm, told *Legal Times*, which exposed the potential conflict of interest in September. "Obviously it gives us a chance to learn more about a substantial area of legal work. . . . We hope it may well open up new professional opportunities in the future." No doubt. In essence, the FDA had agreed to pay these lawyers almost three quarters of a million dollars to figure out how best to help their corporate clients get around the FDA. The same law firm, by the way, recently launched a coalition to fight any tightening of workplace safety and health rules. After Rep. John Dingell grilled Kessler about the plan at a September hearing, the FDA chief, apparently caught unaware, canceled the remaining $400,000 or so of the contract.

Other dirty deals undercut hopes of tougher enforcement from the FDA. As soon as Kessler began making noises about even trying to toughen the FDA's approach, he lost many of his top legal advisers. Where did they go? To law firms planning to cash in when, should a day of tighter regulation be dawning, food and drug companies come looking for help.

In the food and drug coup of the year, Arnold & Porter, a Washington law firm, snagged the FDA's top litigator, Arthur Levine. Levine left his post in

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April after more than 20 years with the agency to become a partner in the firm, which lobbies for Philip Morris and its subsidiary, Miller Brewing Co., as well as General Mills and Pfizer. About the same time, the Washington office of Cleveland's Baker & Hostetler signed FDA refugee Donald Segal as a partner. Segal, who left after about 12 years, had most recently been associate chief counsel for medical devices. Not to be outdone, Patton, Boggs & Blow got itself the other associate chief counsel for medical devices, Mark Heller. Heller left the agency in May after about 10 years to become a partner in the firm, whose services include lobbying Congress against the Food, Drug, Cosmetic and Device Enforcement Amendments of 1991—a proposal to strengthen FDA's enforcement capability. By November, Heller was lobbying hard for the plastic surgeons' trade association to prevent his old agency from banning precisely the type of "medical devices" he used to police—silicone gel breast implants, which are suspected of hurting hundreds of thousands of women.

Law firms were not alone in exploiting the skills and contacts of erstwhile FDA officials. In June, pharmaceutical giant Glaxo Inc. hired Hugh Cannon, FDA's associate commissioner for legislative affairs. Cannon, who became director of federal agency relations for Glaxo, says, "I've got a daughter who's going to be a senior in high school. In one more year —college costs. It was time to build something for my family."

The revolving door doesn't cause problems only for the FDA. The enactment of the Clean Air Act amendments last year sent many Capitol Hill aides scurrying to their computers to print up resumes. Charles Knauss, former chief minority counsel to the House Energy and Commerce Committee, landed a partnership at the D.C. law firm Swidler & Berlin, which represents a wide array of clients worried about the act's implementation. Robert Hurley, former minority staff director of the Senate Environment and Public Works Committee, headed for R. Duffy Wall & Associates. Hurley became vice president of the unusually secretive lobby shop, whose clients include the Pittston Group.

In other words, the more the regulators try to crack down, the faster the revolving door spins, and the better corporations get at finding loopholes. Talk about diminishing returns.

Passing a law to jam the revolving door—to prevent retired public servants from profiting in the private sector from knowledge gained at public expense—is a first step toward making regulation work. But more than anything else, what's needed is a change in attitude at the top.

Quayle lays a reg

There have been some hopeful, if ultimately misleading, signs of such a change. The effort by, of all people, Dan Quayle—Bush's chief antiregulation attack dog—to reform our legal system by switching to a loser-pays system implicitly concedes what liberals have long argued: There's no such thing as a "free" market. Government has the obligation to establish fair rules for competition in the marketplace—and then to keep watch and intervene to rewrite those rules if, as in the case of lawyers, the game goes awry.

In fact, switching to loser pays is a classic instance of smart government regulation. If the loser of a suit had to cover the winner's legal fees, businesses would benefit because frivolous suits—ones filed in hopes of extorting a settlement from a corporation unwilling to pay the costs of a protracted court battle—would disappear. And average citizens would benefit because they would no longer need a fat bank account or a high-profile claim to afford a good lawyer—they'd need only a just grievance. All we'd lose is a grotesque market inefficiency: the proliferation of frivolous suits, which have engorged the coffers of big legal firms to the point where they can afford to woo second-year law students by paying them $1,600 a week during the summer to eat at trendy restaurants and watch baseball games from the firms' skyboxes.

But you don't have to stretch your imagination too far to suspect that Quayle has the interests of the Union Carbides rather than those of the Gideons of America at heart. You just have to realize that the regulatory failures laid out here are only the tip of the iceberg. One in six children is believed to be contaminated by lead—the most serious environmental health hazard to kids. Yet the administration forced the head of the CDC to testify before Congress against his own recommendations for a cleanup.

If our top regulators are not prepared to take on a health hazard that has been documented for decades (they are attacking it in one building—the vice-presidential mansion), how can they possibly hope to regulate genetically engineered agricultural products or whatever new games the people who brought us the leveraged buyout have in store? It's time to get smart about economic law, and to get tough on economic crime. Those 65 percent of Americans who expect the government to be policing cosmetics may seem naive, but they're really very wise. The best step they could take would be to unambiguously share that wisdom with the presidential candidates in 1992. □

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WHO'S WHO

Days before **Dick Thornburgh** was upset by Democrat **Harris Wofford** in Pennsylvania's Senate contest, **George Bush** offered to make a last-minute appearance to bolster his former attorney general's lagging prospects. By then, Thornburgh aides realized that Bush was their problem and politely declined the invitation. . . .

Brit Hume, the ABC White House correspondent who likes to play tennis with the president, has become the object of ridicule by his colleagues because of his obvious sympathy for the administration. A recent example was the October 22 press conference in which Hume interrupted a legitimate question to **Marlin Fitzwater**—"Is there consideration being given to the idea that the Democrats should have a larger say in who you pick [for the Supreme Court]?"—with a dismissive joke: "Marlin, isn't it clear that you could fix the whole thing by clearing everything with Senator **Biden** now?"

This enabled Fitzwater to escape dealing with a serious issue—the need for consultation in a divided government—by laughing and saying, "I think Brit asked the key question here." One reporter later asked, "Brit, are you the deputy press secretary?" . . .

Democrats may be interested to learn that the Nine Sundays proposal for election coverage—which they may believe is benign because it came from the John F. Kennedy School at Harvard—was actually authored by **John Ellis**, who just happens to be George Bush's nephew. . . .

One of the more intriguing bits of Washington gossip involves the significance of the tapes leaked to "Nightline" of conversations between **Ollie North** and the Iranians concerning the arms for hostages deal. One of the voices on each of the tapes belongs to **Amram Nir**, the Israeli secret agent who also happened to brief Bush around the time that the then-vice president was visiting Israel. The speculation is that the North tapes were leaked by the Israelis to demonstrate to the White House that, if Israel is pushed too far by the U.S. in Mideast peace negotiations, a Bush-Nir tape could also be leaked. If the tape proved Bush's knowledge of the arms for hostages deal, it would be embarrassing to say the least. . . .

Secretary of State **James Baker** wanted to firm up his bona fides with the Arabs on the eve of the Mideast peace talks. So he trotted out his chief Mideast expert, **Dennis Ross**, for an interview with *The Washington Post*. Ross, who is Jewish, is tough on Israel and Prime Minister **Yitzhak Shamir**. . . .

Faithful Who's Who readers weren't surprised when Bush icily distanced himself from White House aide **Edward Rogers Jr.**, who had signed a $600,000 contract to represent Sheik **Kamal Adham**, said to be one of the shadier figures in the BCCI scandal. Rogers was the deputy to **John Sununu** whom Bush had wanted to axe last winter—see our April 1991 issue—but who was kept on until August by Sununu in what seemed to be a struggle of wills with the president. So Bush's coolness toward Rogers may also have carried a message to Sununu. . . .

Voice of America correspondents were recently reprimanded by State Department spokeswoman **Margaret Tutwiler** for questioning her boss, James Baker. That angered the VOA, which hates to be treated as a propaganda arm of the department. That flap followed another blow to VOA's pride: Baker's decision last year to award the VOA seat on his plane to *USA Today*. . . .

The hot and cold relationship between the White House and **John Danforth** continues. After months of indifference to Danforth's civil rights compromise, the White House embraced it at the last minute, partly out of gratitude for Danforth's steadfast support of **Clarence Thomas**. But then Bush got angry when Danforth later confided to the press that Bush had caved on quotas. White House legal counsel **C. Boyden Gray** believes the administration prevailed because key portions of the law are vague and invite challenges that may not survive the scrutiny of a conservative Supreme Court. . . .

National Security Council aide **Richard Haass**, still floating from his moment of air time during the Gulf war, barred White House ghostwriters from working on Bush's Mideast speech in Madrid, which Haass wrote—and modestly billed as the most important speech of Bush's presidency. . . .

Ken Duberstein, the former White House chief of staff assigned by the Bush administration to shepherd Clarence Thomas's nomination, claims "credit" for the attack strategy used against **Anita Hill**. But after an extra glass of wine at a Georgetown dinner party, C. Boyden Gray said it was he, not Duberstein, who was responsible for the strategy. The administration's attack group is said to have also included **J. Michael Luttig**, an assistant attorney general, and **Rosalie G. Silberman**, vice chairman of the EEOC. . . .

Although his reputation has been in decline for a couple of years, **Alan Simpson** was once a respected member of the Senate. So quite a few people believed him when he said, "I really am getting stuff over the transom about Professor Hill. I've got letters hanging out of my pocket. I've got faxes. I've got statements from her former law professors, statements from people who know her, statements from Tulsa, Oklahoma, saying 'Watch out for this woman.'" Thus far, however, he has produced no documents to support his claim and the name of only one alleged writer of a letter, **Mary Constance Matthies** of Tulsa. When asked about Simpson's statement, she told **David Rosenbaum** of *The New York Times*: "People make different interpretations of things. I don't want to call Senator Simpson a liar. I don't know what else he was referring to. It would not be the way I characterize the letter." . . .

While Thomas was being questioned on natural law, Senator **Hank Brown** was reading the home furnishings section of *The Washington Post*. . . .

—*Susan Threadgill*

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Drug Fiends

Even inside Johnson & Johnson, public safety can take a back seat to profits

by Morton Mintz

In your hall closet, just above the freshly folded towels, there probably waits a white and pink bottle of Johnson's baby powder. For years it has soothed sore bottoms or dried sweaty palms or simply sat there, a symbol of continuity. It's a product your mom used, maybe your grandmother. It's something you can trust.

That's precisely how its maker, Johnson & Johnson (J&J), wants you to feel. For a century, the world's largest health care conglomerate has successfully promoted its integrity and concern for consumer well-being as it sold Tylenol, Band-Aids, and a shampoo that promises "no more tears." Unlike Upjohn, soiled by the Halcion scandal, or the pushers of Selacryn or Oraflex or Versed, J&J has managed to preserve its fine reputation, not just as a money machine, but as an exemplar of ethics in commerce. One of only a handful of blue-chip corporations that have developed progressive benefits for their workers—offering family leave, helping employees care for their children and elderly parents—J&J several times has been enshrined by *Fortune* magazine as one of America's 10 Most Admired Corporations. That gleaming public image is personified by James E. Burke, J&J's chairman and chief executive officer from 1976 until 1989, who has been saluted by *BusinessWeek* as "one of the most admired executives in America."

No journalist or flack has done as much to crystallize the ethical image of Burke and J&J as did the deranged character who killed seven people in the Chicago area in 1982 by lacing Tylenol capsules with cyanide. J&J's aggressive response—clearing the shelves of Tylenol

Morton Mintz reported on the pharmaceutical industry for a quarter-century before leaving The Washington Post *in 1988. His books include* By Prescription Only, The Pill: An Alarming Report, *and* At Any Cost: Corporate Greed, Women, and The Dalkon Shield.

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throughout the nation—underscored Burke's claim that J&J valued people over profits. J&J built its reputation on "helping people to heal," Burke told an audience of tens of millions on "60 Minutes" that year. William Webster, then-director of the FBI, validated that claim, telling Mike Wallace that "the attitude of top management has been first the interest of the public, then assisting law enforcement, and then their own corporate concerns for the product." Later, Ronald Reagan himself blessed Burke for living "up to the very highest ideals of corporate responsibility and grace under pressure."

But the next time you open that hall closet, consider this: Over the past 15 years, J&J and its subsidiaries have been accused of knowingly and needlessly endangering millions of people. A tour through the inner workings of the J&J empire suggests that, in the case of at least four drugs—Zomax, Suprol, Ortho-Novum birth-control pills, and Retin-A—J&J, under Burke's leadership, willfully disregarded public safety in order to push its products.

If these accusations taken together are warranted—and solid evidence supports them—they expose a moral swamp, the sort of short-sighted greed commonly associated with the makers of generic drugs, rarely with the high-minded J&J. They also reveal the remarkable forbearance with which not just the government (particularly in the Reagan era) but society at large treats corporate misbehavior. Today, you probably don't feel any different about that bottle of baby powder, or any less trusting of J&J, than you did five years ago. And far from being shamed for the damage done on his watch, Burke is still lionized for his exacting ethical standards. Upon Burke's retirement, television producer Norman Lear named him chairman of his Business Enterprise Trust, which, according to its press releases, seeks to celebrate corporate acts demonstrating "courage in upholding important business principles and serving the common good." No one had done a better job of revealing J&J's disinclination to do that than did *The Washington Post.* Yet rather than spurn the man ultimately responsible for the corporation's conduct, the paper's top officer, Katharine Graham, has named him an outside director of her company, which controls not just the *Post* but *Newsweek.*

The story of J&J's sins is an object lesson in one of the great flaws of capitalism—one that is crucial, if a bit unhip, to point out as potentate after potentate chucks his Marx and starts negotiating with McDonald's. You won't hear it from George Bush or the folks at the American Enterprise Institute, but as anyone who doesn't misread history knows, the free-market system can drive even the most noble-seeming businessmen to rank long-term common good behind short-term business principles—which is to say, profits. More telling than a binder full of Common Cause reports, the story of J&J's maneuverings through the gap-toothed federal drug approval process demonstrates why good government policing—fast, flexible regulation—is so critical, and such a far cry from what we now have. When a corporation freely and repeatedly can do so much harm and then escape meaningful punishment, and when a CEO can stand by while hundreds are injured and some even killed and still be hailed as a champion of corporate ethics, there is something deeply wrong with the way America is doing business.

Ever since J&J introduced Tylenol in the early seventies, it has played hardball with its competitors in the crowded painkiller mar-

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ket—Bayer, Bufferin, St. Joseph's, and the like. So the company was understandably uneasy about the advent in 1971 of an inexpensive pain-relieving device—a one-time purchase—that involved no pill-taking at all. The device, called a transcutaneous electrical nerve stimulator, soothes pain by sending an electric current into the body through electrodes attached at the pain site. Apparently impressed with the product—produced by a small company with few resources to market it—J&J bought up the entire organization. Oddly enough, though, it never promoted the stimulator. J&J's real goal was apparently not preventing pain, but preventing competition. The founders of the usurped company sued, charging that J&J had, among other things, violated the Sherman Antitrust Act. After nearly 15 years of legal battles, J&J settled out of court.

Three of McNeil's top physicians told the company president that they were so concerned about the safety of Zomax that they themselves would not prescribe it. But the firm's executives refused to recall the drug.

That may have been one competitor down, but by October 1980 there were more anodynes than ever on the market. Tylenol and a dozen variations of aspirin crowded drugstore shelves; behind the counter sat hundreds more painkillers. It was a challenging time for J&J's subsidiary, McNeil Pharmaceutical, to be launching its new prescription painkiller, Zomax—particularly because there was no clear group of people for whom the drug's benefits outweighed its risks. Zomax was on the market for 28 months before McNeil suddenly recalled it. But by that time, so many physicians had been gulled into believing the painkiller to be both safe and useful that they had prescribed it for nearly 15 million people. By the Food and Drug Administration's (FDA) accounting, the drug had contributed to at least 14 deaths.

These deaths followed so-called "anaphylactoid reactions," allergic or hypersensitive responses that commonly lead to a drop in blood pressure, difficulty in breathing, facial swelling, rashing, and itching. Patients going into anaphylactic shock can also lose consciousness. In addition to the 14 who died, more than 2,200 other Zomax users suffered allergic reactions, including 403 for whom the reactions were life-threatening. (It is conventional scientific wisdom that adverse drug reactions are grossly underreported.) In addition, the FDA from the start considered Zomax, the first nonsteroidal anti-inflammatory drug it approved, to be the only drug of its kind to pose a possible cancer risk to humans. Based on an independent review of an animal study, Dr. M. Adrian Gross, a former FDA toxicologist, rated the cancer risk of Zomax "highly significant."

Yet the public has heard little about this. Why? In good part because J&J has worked damn hard to keep it from us. Although more than 600 Zomax product-liability lawsuits were filed in 43 states, McNeil used gag orders to bury damaging information that it had been compelled to turn over to plaintiffs. *Washington Post* reporters Benjamin Weiser and Elsa Walsh disclosed in October 1988 that McNeil "has taken only three cases to trial, choosing instead to settle cases outside the courtroom without admitting any liability. As part of these settlements, it obtained confidentiality agreements that prohibit opposing lawyers and their clients from revealing what they have learned about Zomax."

What were McNeil's attorneys trying to hide? Documents and testimony suggest that the company knew for years about the possibility of serious allergic reactions to Zomax but suppressed the information to preserve the drug's sales. In the Bible, Leviticus admonishes that one must not "put a stumbling block before the blind." You rarely hear it from the clergy, but a drug company that deceives physicians by knowingly failing to inform them fully and promptly of the hazards of a prescription drug is doing just that. The blind are of course the doctors' patients, nearly all of whom are ignorant of the complex pros and cons of the drug. So they must—blindly—trust their physicians, and perhaps pay with their health, safety, even their lives. That may have happened in the case of Zomax.

According to McNeil internal documents, during premarket testing of Zomax in the seventies, the company received reports that several users had suffered severe but nonlethal allergic reactions. These reactions should have been recognized as anaphylactic almost immediately, because Zomax is almost identical to Tolectin, a McNeil prescription arthritis drug that accounts for an extraordinary share of anaphylactic reactions among drugs in its class. But McNeil's testers neither identified the reactions correctly nor reported them in FDA-required labeling. According to a report by Patrick Seay, the company's regulatory affairs chief, one McNeil official complained around that time that the company was "reporting too

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many adverse reactions on our drugs." But the company had a more palatable explanation when later questioned by the *Post*. The premarketing evidence, they said, had been inconclusive.

The FDA apparently agreed. Despite investigators' concerns about the possible cancer risk, the drug received federal approval in October 1980, a decision based largely on the belief among key agency personnel that the painkiller was as effective as morphine. Did the FDA cite a study to justify that crucial belief? No, FDA officials later admitted—no such study existed. Nevertheless, the drug immediately went on sale, and the carcinogen question was brushed aside. Within four months, Zomax had captured 11 percent of the prescription painkiller market.

Determining cancer risks may take awhile, but allergic reactions are easier to see. Shortly after marketing began, McNeil received reports of several more reactions. So in July 1981—nine months after it started promoting the drug—McNeil revised the prescribing instructions to disclose that "anaphylactoid reactions have been reported." But the disclosure was tucked away in the "precautions" section, not in the more conspicuous "warnings" section—a decision that one of McNeil's own executives later decried as a triumph of sales over safety. Seay, the regulatory affairs chief, noted in a 1984 overview of marketing strategy that the marketing division had gained "a greater role in the content and changes of the package insert" at the expense of the medical side. "We resisted too much and waited too long," he wrote. And he was right. But package labeling wasn't the half of it.

Totalled recall

In February 1982, immediately following a report in the *Journal of the American Medical Association* (*JAMA*) of a case of anaphylactic shock in a Zomax user, a directive to play down the report went out to McNeil's sales force. "This information is being sent to you so you will be fully prepared to respond to a physician or pharmacist who initiates discussion on the article," the memo said. "You should not bring up the subject."

The memo may as well have been a cue to the FDA, which looked into the matter after the *JAMA* report but did nothing. Inside McNeil itself, however, the subject wouldn't die. Later that year, a McNeil researcher reviewing the 178 known reactions to Zomax discovered a pattern: Many of the reactions occurred in people who took the drug intermittently. Intermittent users were Zomax's largest market, about 75 percent; any adverse reactions among this group of casual users would unquestionably slow sales. So under the guise of informing the public, McNeil did a little damage control. In the spring of 1982, it drafted a "Dear Physician" letter to 200,000 doctors specifying that reactions might occur in intermittent users. By the time the letter was mailed, however, it consisted of a single, and singularly vague, sentence: "Hypersensitivity upon reexposure or extended use cannot be ruled out." The word "intermittent" had been excised.

But McNeil appeared to be apprehensive even about that mild statement. Just seven days after the mailing, the company launched a new, high-pressure sales campaign. "We're calling it 'Operation 111,'" sales vice president Thomas H. Odiorne said in an April 16 mailgram. "Now, if that sounds like war, well, in our world of selling that's what it is." Explaining the name "Operation 111," the mailgram said that McNeil hoped to reap $111 million in annual sales of sister drugs Zomax and Tolectin. For the next 10 weeks, the mailgram instructed, the sales force was to concentrate exclusively on the two products.

Not everyone at McNeil was happy with that war cry. The tension between profits and public safety came to a head in two days of meetings in February 1983 at McNeil headquarters in Spring House, Pennsylvania. Three of the firm's top physicians, including Dr. James A. Dale, an associate medical director, told the company president that they were so concerned about the safety of Zomax that they themselves would not prescribe it. But McNeil executives, accountable to James Burke, refused to recall the drug, deciding instead to strengthen the warning in the labeling. In the company's view, this was the prudent course, given what was known at the time. But while the new warning was being prepared, McNeil learned of fatal anaphylactic shock in three Zomax users.

Another jolt followed quickly: Several nonfatal anaphylactic reactions in Syracuse, New York, were reported by a local television station that featured a Syracuse physician's account of his own life-threatening reaction to Zomax. This was the first bad publicity for Zomax to appear in the lay press, and it was such publicity that McNeil most feared. The next day, March 4, McNeil announced it was recalling the drug from the U.S. market. The decision was made by Burke himself.

Your FDA on drugs

Where was the FDA during all this? A report released the previous year by the General Accounting Office (GAO) provides a glimpse of the investigative team charged with safeguarding America's health

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from greedy corporations. It took the agency an average of 13 weeks—and sometimes more than a year—to enter reports of adverse reactions into its computer tracking system. A later GAO report found that 102 of 198 new drugs approved by the FDA between 1976 and 1985 caused serious reactions that often were not detected or disclosed by the agency until several years after approval. The Zomax case followed that trend. While 2,000 allergic reactions had been reported to the FDA, a House subcommittee that oversees the agency, chaired by Ted Weiss, later found that it had been "unaware" of most of them. As for the risk to intermittent users, an FDA official later testified that he'd known about those reactions as early as March 1982. Yet it wasn't until 11 months later—a month before McNeil withdrew the product altogether, and after 14 people had died—that the FDA advised McNeil even to *warn* doctors about possible reactions.

What if J&J's miracle cream, Retin-A, hasn't been shown to be safe for long-term use? What if the PR campaign violates federal law? According to the FDA, these are not hypothetical questions.

By the time McNeil ceased sales in the United States, it had sold $100 million worth of Zomax here, although the company admitted it knew of five Zomax-related deaths and of 1,100 reports of allergic reactions. Still, J&J was not going to give up its millions so easily. After the recall, McNeil sought FDA approval to remarket the drug with a strict new package insert, saying it was approved only for chronic pain, and even then as a last resort. And it continued to sell the drug abroad—another stumbling block before the blind—well into the following year.

Burke told the *The Washington Post* he was proud of his company's handling of Zomax, rejecting suggestions that J&J should have withdrawn the drug immediately after the February meetings in Pennsylvania. Once the company decided to recall the drug, he said, "I think we did a good thing—I don't see how you could do it any faster."

Dr. Dale wasn't quite so proud. The deaths "were avoidable," he told the *Post*. "They were avoidable side effects. . . . I feel guilty. . . . We met and had the opportunity to take action. . . . We could have done something sooner."

Despite his devastating perspective on J&J's marketing of Zomax, Dale has never testified in a Zomax lawsuit. In the several cases in which his testimony was sought—testimony in which he would reveal the advice of McNeil's three top physicians at the February 1983 meetings—J&J did what it has done in numerous embarrassing law suits: It settled, on condition that the court files be sealed forever.

Kidney lies

One case of bad judgment? Consider Suprol, another prescription anti-inflammatory drug with potential for high profits. Like Zomax, Suprol was heavily promoted to physicians as an alternative painkiller to addictive narcotics—just the thing for folks with morning stiffness, muscle pulls, or back pain. Like Zomax, it caused a spate of serious adverse reactions that were reported with something less than candor to the FDA. Like Zomax, it caused benign tumors in rodents, meaning it posed a possible carcinogenic risk to humans. And like Zomax, Suprol remained on the market long after it should have been removed if J&J really did put safety first.

Suprol is a tradename for suprofen, invented by J&J's Belgian subsidiary in 1972 and sold in Europe by J&J's subsidiaries there beginning in 1982. In the United States, J&J's Ortho Pharmaceutical subsidiary filed an application for FDA marketing approval in 1978—a sloppy piece of work, according to Dr. John F. Harter, the FDA medical officer who had primary responsibility for Suprol. The application "has been plagued from beginning to end with 'bad data,'" much of which was "the result of poor 'workmanship,'" he said in an internal memo in June 1985. "We communicated this lack of confidence to J&J's top management," he added, "but as far as we can tell, it has had little effect on tying up the loose ends in this application."

In 1982 and again in 1983, while the Suprol application was pending at the FDA, at least seven studies were being carried out on human volunteers in the United States and abroad. Ominously, some of the volunteers suffered acute renal (kidney) toxicity. More particularly, young men—usually in their mid-thirties—developed a rare "flank pain syndrome," a severe pain between the ribs and both hips that radiates to the abdomen or groin, accompanied by blood in the urine. In some users, the drug also decreased their kidneys' ability to filter noxious chemicals from their blood.

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In the last two months of 1985, the Institute for Clinical Pharmacology (IPHAR) in West Germany performed two more studies commissioned by J&J's Swiss subsidiary—studies that showed clear evidence of Suprol's adverse effect on the kidney. Of 24 healthy young male volunteers, the final data showed, 9—an astonishing 37.5 percent—"suffered either mild or moderate flank pain." Three more had symptoms of Suprol-related renal toxicity.

During the approval process, FDA regulations require the manufacturer to "promptly report any findings associated with the use of a drug that may suggest significant hazards, contraindications, side effects"—a noble requirement, but study after study, by Congress and the GAO, has shown that the FDA is not able to enforce it. On Christmas Eve 1985, knowing nothing at all about the findings of the IPHAR studies, the agency approved Suprol.

Later, J&J also claimed ignorance. "We were not aware of the existence of the . . . syndrome at the time," a J&J spokesman told me for a *Washington Post* story. The company added that IPHAR did not report the data even to the Swiss subsidiary until February and March 1986; the results were not relayed to McNeil Pharmaceutical until March and May 1986. In the meantime, sales continued apace.

The deception of the hapless FDA did not end with delayed reporting. Two months after finally receiving the IPHAR data, McNeil informed the agency that the volunteers with flank pain "did not require hospitalization . . . or discontinuation in the study." But in the fall of 1986, when McNeil submitted the actual studies to the FDA, it amended its initial claim. Actually, the company conceded, three of the men had "required hospitalization," while three others required "discontinuation from the study." Despite the confession, J&J insisted to the *Post* nearly a year later that "the IPHAR cases were nonserious [and] did not need to be reported at all."

J&J's seeming indifference baffled Dr. Michael Dunn, a kidney expert at Case Western Reserve University who had been consulted by McNeil about adverse reactions to Suprol. Afterward, he was asked by Weiss's Subcommittee on Human Resources and Intergovernmental Relations to review the IPHAR studies. His conclusion was harsh toward both J&J and the FDA. Would the IPHAR and other studies "have alerted competent medical reviewers to the drug's unusual renal toxicity . . . ?" "Absolutely yes," he responded. "I don't see how you could look at this data and not see a danger sign. You would literally either not have to look or have a severe visual problem."

How could J&J and the many affiliates that sold Suprol have missed the renal toxicity that Dunn and other experts saw as utterly obvious? How could the FDA have so misread the studies? Or is the better question: Did they miss it? The following chronology suggests that the knowledge was indeed attainable—and perhaps more of it *was* attained than J&J would like to admit.

March 1986: McNeil submits to the FDA a revised labeling that, for the first time, warns of flank pain and renal toxicity.

April: McNeil says, in the first of three increasingly worrisome "Dear Doctor" letters in six months, that it has 16 U.S. reports of "abrupt onset of flank pain after one to two doses" of Suprol.

June: The FDA, aware of 90 reports of kidney damage—mostly in young men who had taken only one or two capsules—tells McNeil to mail a second "Dear Doctor" letter.

October: Shortly before J&J's U.K. subsidiary ends Suprol sales "on commercial grounds," the United Kingdom's drug regulators advise the FDA that its approval of Suprol "should be revoked." The FDA does not reexamine the data. McNeil, in its third "Dear Doctor" letter, advises that "Suprol should not be considered as the initial treatment for" its approved uses.

February 1987: In a letter to the FDA, Rep. Weiss cites seven studies that preceded the IPHAR research and that "were reported well before Suprol's U.S. approval," which found flank or groin pain in 24 of 107 healthy male volunteers.

May 13: The European Community's drug-safety panel recommends suspension or withdrawal of all remaining licenses to sell Suprol "in view of the specific hazard in young males, without significant benefits, compared to other [nonsteroidal anti-inflammatory drugs] in the same group."

May 15: McNeil announces worldwide suspension of Suprol sales on the basis of the EC action. By then, more than 300 cases of flank pain had been reported in an estimated half-million American users.

It's important to note that the FDA itself took no decisive action to ban Suprol. But it did cast a few belated stones. As a result of the Weiss hearing, the FDA conducted an extensive investigation into the adverse-reaction reporting practices of McNeil and Ortho. Agency inspectors found "reporting deficiencies that appeared to have compromised the complete and timely communication of some adverse drug reactions between some Johnson & Johnson affiliated companies which, on a few occasions, resulted in an incomplete data submission to the FDA," wrote Daniel L. Michels, the FDA's top official for compliance with the drug law, in a February 1989 letter to J&J CEO Burke. In other words, J&J's subsidiaries kept bad news from each other. Nevertheless, Michels said, the investigation "did not produce suf-

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ficient findings of violations" to warrant further action or referral to the Justice Department. He concluded by telling Burke, in a polite way, to get his act together: "Please advise us within 30 days of corrective actions taken or measures that you plan to take to preclude recurrence of these and similar events. . . . Assuring the coordination and cooperation of affiliated companies in processing such information is the responsibility of the Johnson & Johnson parent company."

Strong words. Of course, by that time, Suprol had already been off the market for a year and a half.

Poison pill

In the case of Suprol, it took the action of foreign governments to drive a problem drug off the American market. But sometimes—as with a phenomenally popular birth control pill—J&J evaded foreign regulation as well as the home-grown FDA.

On June 30, 1971, a physician prescribed Ortho-Novum 1/50 for Pauline Jane Buchan, a 23-year-old Ontario mother. She was in excellent health, a nonsmoker with no predisposition to a stroke. Yet after taking the pill only briefly—slightly less than six weeks—she suffered a stroke. It left her permanently disabled, damaging her brain and substantially paralyzing her left arm and leg. The pill had been issued with no warning that it increases the risk of a stroke —another stumbling block.

In 1974, Buchan sued Ortho Pharmaceutical (Canada) Limited, a wholly owned subsidiary of J&J, and won $606,795 in damages. The company filed an appeal, but in 1986 the Ontario Court of Appeals threw it out. "[I]t can properly be assumed," Judge Sydney L. Robins said in the appellate court's opinion, "that Ortho [Canada] was aware of or had available to it all of the information possessed by Ortho U.S. with respect to their mutual products including adverse reaction reports, medical and scientific studies on birth control pills, and, in particular, the information which led to the warning given to prescribing physicians in the United States."

The warning given to physicians in the United States was adequate; the warning given to physicians in Canada was not. In its entry for Ortho-Novum 1/50 in the 1971 *Physicians' Desk Reference* (*PDR*), for example, Ortho U.S. specifically warned physicians of the "statistically significant association between cerebral thrombosis and the use of oral contraceptives." In the "adverse effects" section of the Canadian equivalent of the *PDR*, Ortho Canada omitted any mention of cerebral thrombosis or stroke.

In the "file cards" provided to physicians by Ortho U.S. as early as 1968, physicians were urged to "be alert to the earliest manifestations of thrombolic disorders," including "cerebrovascular disorders," and to discontinue use of the pill "immediately" if any thrombolic disorders occur. No such warning appeared in the cards provided to physicians by Ortho Canada. The contrast was similar in the bulletins given to the salesmen who called on physicians and in pamphlets given to doctors for distribution to patients.

The pharmaceutical industry has a long and nasty tradition of making claims of safety and efficacy in other countries that it cannot make in the United States. This tradition was upheld by Ortho Canada. Yet even at home, Ortho was having trouble coming clean to the millions of women who used its products. In February and March 1987, FDA inspectors found "serious violations" of drug law involving the manufacture of Delfen Contraceptive Foam. "Your firm failed to take appropriate measures to prevent [the over-the-counter product from] being contaminated with objectionable micro-organisms," the agency said in a "Regulatory Letter" obtained under the Freedom of Information Act. Ortho also "failed to conduct investigations of complaints, and it failed to include in the written record the reasons that investigations were not conducted," Matthew H. Lewis, the FDA's district director in Newark, told Gary Parlin, the company's president. The firm sent two reply letters to the agency, but these were unresponsive to the violations, Lewis said. Yet the FDA neither fined nor censured the company, and the press never reported the story. In this case, as in the others, J&J had little trouble dropping the corporate veil. Only now, after two decades of corporate darkness, is it finding that veil a little harder to draw.

Ponce de lyin'

Today, Zomax and Suprol are off the market, Ortho-Novum's warnings appear in Canada, and—presumably—the micro-organisms infesting the Delfen Contraceptive Foam have been corralled. But J&J's biggest commercial deception is raging still in one of the most profitable pharmaceutical "breakthroughs" of the past 20 years: the discovery of a fountain of youth in a tube, Retin-A.

If a drug manufacturer mounts a costly public relations campaign persuading large numbers of women that its prescription skin cream retards wrinkles, it can be confident of making a pile of money. But what if the product hasn't been demonstrated to be an effective wrinkle-fighter? What if it hasn't been shown to be safe for long-term use? What if some supposedly independent physicians who publicly bless the product have hidden financial ties to the

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manufacturer? What if the PR campaign violates federal law?

According to the FDA itself, none of these are hypothetical questions. "We do not have data to assess the long-term safety of Retin-A for chronic use for wrinkling," Commissioner David A. Kessler testified before Congress in June, noting that one unknown is whether the drug, a photosensitizer, could increase the risk of skin cancer. Because of this dearth of information, the FDA has continued to withhold approval of the drug as a wrinkle fighter. But thanks to weak agency enforcement and willful J&J promotion, doctors all across the country are prescribing Retin-A to anxious women. Why such cavalier corporate behavior? J&J's estimated profit from Retin-A was nearly $100 million in 1989 alone. The ultimate market is estimated at $1 billion to $3 billion.

Imagine if Burke had to do jail time for J&J's sins. You'd see a lot of high-flying CEOs suddenly take an interest in whether the pills or Pintos that look so good in the quarterly reports are poisoning people or blowing them up.

That's a piece of supreme good fortune for one Dr. Albert M. Kligman, a professor of dermatology at the University of Pennsylvania. In 1967, he invented and patented Retin-A, which the FDA approved as a treatment for acne, and then licensed it to Ortho Pharmaceuticals. Years later, Kligman claimed that for sun-damaged skin Retin-A was also a wrinkle-retardant. Instead of waiting for the FDA's imprimatur, Ortho did an end-run around the agency, massively promoting the purported miracle cream to physicians and—unusual for a prescription drug—directly to the press and public.

Prescribing a drug for a different use than the one for which it has been approved is not illegal. But promotion of that unapproved use *is*. In the fall of 1987, a PR firm retained by Ortho sent local television stations a letter touting Retin-A as a wrinkle-remover for sun-damaged skin and offering to arrange appearances for dermatologists "to go on TV and talk about Retin-A and wrinkles."

One of the televised skin doctors, Diane Kleinsmith, appeared on "Hour Magazine" saying that the drug "increases the blood flow to the skin, and it also increases the cell renewal, or turnover rate of the cells." What the viewers were not told—and what "60 Minutes" eventually revealed—was that Kleinsmith was on Ortho's payroll. The PR firm paid her and other doctors $500 to $2,000 for each of as many as 20 TV appearances.

TV stations were not the only ones fooled. At the end of 1987, *JAMA* published a small study in which Dr. John Voorhees, professor and chairman of dermatology at the University of Michigan, hailed Retin-A as a wrinkle-retardant. And the PR circus began. Immediately after publication, Voorhees and Ortho, freezing out independent scientists, held a press conference at the Rainbow Room of the Waldorf-Astoria in New York—an audience and locale chosen in order to grab headlines and thus build consumer clamor for Retin-A. That afternoon, Voorhees compared the drug's benefits favorably to those of cosmetic surgery, showing striking before-and-after slides. That night, all three networks trumpeted the happy news. "A skin cream that actually makes wrinkles disappear," said Dan Rather on CBS. As intended, hundreds of thousands of men and women asked their doctors to prescribe Retin-A. Dr. Robert Katz, a solo practitioner in Rockville, Maryland, later testified before a House subcommittee that the day after the Rainbow Room session, he "received 30 calls requesting either information or prescriptions of the drug for this unapproved purpose. In addition, a very high percentage of patients coming into the office for other reasons also coincidentally requested the Retin-A for wrinkles." The drug's sales tripled, and J&J stock rose five points.

Problem was, Voorhees was not an ideally independent—or ideally thorough—scientist. Despite the flood of publicity, his study involved only 30 people. His press conference was planned and paid for by Ortho. And since 1986, "60 Minutes" revealed, J&J had made grants of nearly a million dollars to his department at Michigan. After his thinly populated Retin-A study, the company had hired him directly as a consultant. Nor was Voorhees the only one working on promotion. Ortho itself had distributed a newsletter to dermatologists touting Retin-A as "an excellent way to build a practice." But it wasn't until July 1989—two years after Ortho had begun to publicize Retin-A for wrinkle removal in the press—that the company applied to the FDA for approval of the drug for that purpose.

In the spring of 1990, the National Institutes of Health asked Dr. David Vickers, professor and chairman of dermatology at Case Western Reserve Uni-

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versity, to chair a panel of experts on Retin-A. The panel concluded that there is no reliable evidence that the drug removes wrinkles, and that its safety as an acne drug does not mean that it is safe to apply to sun-damaged, aging skin. "I have concerns about long-term safety," Vickers told the "60 Minutes" audience. As for efficacy, the British *Journal of Dermatology* made a devastating comparison. Plain abrasive soap "can have similar and even more dramatic effects" on the skin than Retin-A.

Did J&J break the law in promoting Retin-A? Four years after the first doctors appeared on TV to promote the supposed juvenescent, the FDA says the company's conduct is "under active investigation." This past June in *The New York Times*, J&J confirmed that the United States attorney in Newark was investigating whether Ortho promoted Retin-A for an unapproved use. In the meantime, tens of thousands more men and women are still venturing to their doctors to drink at J&J's fountain of youth.

Corporate punishment

The unqualified success of J&J, by capitalist standards, points to a massive failure—not just of government regulation, but of capitalism itself. Free marketeers argue that unethical behavior is ultimately punished by the market: Once Eli Lilly & Co. sells you Oraflex, you're not likely to have a whole lot of confidence in its other products. But given the willingness of even the noblest of corporations to bend the rules and risk lives to pump up the balance sheet, such faith in the swift vengeance of the invisible hand seems a bit blind. That the corporation is willing, after all, means the vengeance is weak. How can government create a less forgiving market? Here's a two-step program, tragically neglected since the advent of Ronald Reagan: Police new products thoroughly to try to head off any disasters, and then, if the disasters occur anyway, hold those ultimately responsible to account.

It may seem unfair at first glance to impute to James Burke personal responsibility for the corporate conduct detailed here. As chairman and CEO of J&J, he was, after all, at the apex of an enterprise that by 1990 had 175 subsidiaries, nearly 83,000 employees, sales of $11.2 billion, and profits of $1.1 billion. But even if full weight is given to that excuse, I believe it is indeed fair to hold Burke—and all senior executives similarly situated—personally accountable. One reason is that Burke has yet to acknowledge that any executive involved in the immorality repeatedly evidenced here may have acted improperly in any way at any time. He has, in a word, stonewalled: no apologies, no repudiations, no punishments.

But suppose that Burke were to at least admit that, without his knowledge, subordinates had put people at risk of needless disease, injury, or death; suppose too, that he invoked his ignorance of their wrongdoing as his defense. It's a defense that doesn't wash. "Duty arises from our potential control over the course of events," the philosopher Alfred North Whitehead once said. "Where attainable knowledge could have changed the issue, ignorance has the guilt of vice." For Burke in the episodes cited here, the knowledge was readily attainable.

The Supreme Court has endorsed Whitehead's logic. In 1975, the court reviewed a case in which the CEO and president of a supermarket chain was personally convicted of Food, Drug, and Cosmetic Act violations involving rodent infestation of a food warehouse. The basis of the conviction was that the executive had, but failed to exercise, the power to correct the violations. Affirming the conviction, the court held that the importance to the nation of a safe supply of food and drugs is so great that public policy can demand that a "responsible corporate officer can be liable without consciousness of wrongdoing."

So we have two CEOs, each supposedly "without consciousness of wrongdoing" occurring on his watch. One, unaware of rodent infestation, was convicted of violating federal law. The other, defending acts that resulted in repeated massive injury and death, won accolades for splendid management and became an arbiter of corporate ethics. Imagine if, instead, Burke had to do jail time for J&J's sins. You'd see an awful lot of high-flying CEOs suddenly take an active interest in whether those pills or Pintos or red dyes that look so good in the quarterly reports are poisoning people or blowing them up.

But that's a pale substitute for stopping a tragedy before it occurs. As the cases of Zomax and the other J&J drugs show, when it comes to flaws in consumer products, an early diagnosis can prevent a lot of pain. This spring, an FDA advisory panel noted grimly that the agency's nonenforcement "invites violations by unscrupulous companies," calling for "dramatic" steps to improve the FDA's efficacy. This fall, a congressional report accused the agency of letting dubious drugs slip onto the market. Each of those stories rated fewer than 10 inches in *The New York Times*. It's time for the president, presidential candidates, Congress, and Americans in general to wake up to the perverse, if understandable, incentives in the corporate culture. Most sensible corporations *will* break the rules if they know they can do so without significant public reprisals. The sterling reputations of James Burke and J&J prove that the use of our media and government make that scapegracemanship not just possible, but positively easy. □

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MEMO OF THE MONTH

SYNTEX LABORATORIES, INC.
3401 HILLVIEW AVENUE, P.O. BOX 10850
PALO ALTO, CALIFORNIA 94303

(415) 855-5050
TELEX 4997273 SYNTEX PLA

September 1991

Dear Doctor:

We are sending you this letter at the request of the Food and Drug Administration (FDA).

FDA has determined that Syntex Laboratories, Inc. has engaged in a promotional campaign for Naprosyn® (naproxen) that was false or misleading. This campaign used terms such as "arthroprotective" and "New Evidence of Positive Effects" and involved journal advertisements and activities of our sales representatives. It also involved ostensibly non-promotional programs such as medical education symposia and a 30-minute Lifetime Medical Television program.

FDA determined that the campaign misrepresented that Naprosyn has disease-modifying effects in osteoarthritis, based on the results of *in-vitro* and animal studies. In fact, these *in-vitro* and animal studies are of unknown value as predictors of Naprosyn's effects in arthritic patients. No adequate and well-controlled clinical trials demonstrate that Naprosyn has any disease-modifying effects. **Naprosyn has <u>not</u> been demonstrated to halt the progression of joint degeneration.**

This promotional campaign was discontinued in May of 1991. A remedial advertising program is being instituted by Syntex under an agreement with FDA.

Sincerely,

Virgil Thompson
President
Syntex Laboratories, Inc.

See enclosed full prescribing information.

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TIDBITS & OUTRAGES

MICKEY MOUSE JOB
The Disney Corporation recently created the position of "Vice President of Corporate Synergy."

AT LEAST THEY'RE NOT JUST STEALING FROM US
According to a memo from cafeteria managers in the Treasury Department building, home to the IRS, of 2,040 individual pieces of silverware available, some 1,430 (70 percent) were missing and presumed stolen.

WHY WE DON'T HAVE A PEACE DIVIDEND: REASON #112
The Pentagon has announced a $10 million archive to commemorate the Cold War.

WHY WE DON'T HAVE A PEACE DIVIDEND: REASON #113
The Air Force spent $1.5 million on a "prototype" of a new uniform.

NEXT MONTH'S SPECIAL OFFER: PRIME ACREAGE ON THREE MILE ISLAND

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SALES CENTERS

Notice of Intent to Sell REO

Asbestos-Related Properties

$117,000,000

Multi-Family Apartments	23 properties	$52M
Office Buildings	20 properties	$49M
Retail Shopping Centers	5 properties	$16M

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Divided the Stands

How skyboxes brought snob appeal to sports

by Jonathan S. Cohn

The Morgan Stanley trader reclines on the sleek designer sofa, glancing occasionally at the massive TV screen spread before him. This isn't a half-bad way to spend an evening, he thinks as he summons his waiter to the table and peruses the menu impatiently. Filet mignon? No, thank you. Beluga caviar? That's not quite it, either. Dom Perignon for an extra $300? Well, maybe. But what he *really* craves, he discovers sheepishly, is a hot dog.

No wonder. He's at a game at Madison Square Garden. Or, more precisely, on the Garden's exclusive skybox level, where the carpets are plush, the bathrooms spotless, and a hot dog as rare as a hat trick. Here, hidden behind Plexiglas, lurk some of America's most privileged sports spectators: lawyers, bankers, publishing powerbrokers, and various and sundry CEOs. Like their brethren at Los Angeles's Great Western Forum, the Houston Astrodome, and countless other arenas nationwide, they shell out tens of thousands of dollars every year for the privilege of sweat- and scream-free sports. At New Jersey's Meadowlands, Giants and Jets boxes go for $95,000 per season. At Texas Stadium, home of the Cowboys, boxes can fetch a million dollars each—even during the lean years. Who's buying all these skyboxes? Mostly American corporations, which use their sweet seats to build profitable friendships and impress clients.

Given that businesses are inclined to lay off workers before setting aside their season tickets, one might credibly argue that the deluxe box is but another emblem of misplaced corporate priorities. Yet the real cost of the skybox doesn't register on the GNP curve. Instead, it registers in the hearts and minds of sports fans and in the communities they represent. Eating key lime pie high in the sky, these

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afficionados are undermining one of the last bastions of democracy in America: sports.

For better or worse, professional sports occupy a place of elevated civic importance in 20th-century America—a place that has traditionally offered refuge from the status anxiety otherwise entrenched in American life. While a few sports have consciously courted the elite (tennis's maxim "whites only" often seems to apply as much to attendees as to attire), baseball, basketball, and football have historically attracted a sociological spectrum from the Astors to the Average Joe. That mass appeal only widened in the latter half of the century, as an infusion of black athletes into major league sports brought new audiences to the arena. By the sixties, pro games had emerged, however unintentionally, as a paragon of old-fashioned American class-mixing—capable, at their best, of evoking what former Yale president and baseball commissioner Bart Giamatti once described as that "Emersonian crowd feeling." When it rained during a game at Miami's aging Orange Bowl, the filthy rich got drenched along with the great unwashed. The powers-that-were shifted foot to foot in the same nasty bathroom lines as the pressmen and their 10-year-old sons. They heard the same cheers, unfiltered by a Plexiglas shell. That proximity of rich and poor may have sometimes made both sets uncomfortable, but it also evoked a sense of community and connection capable of radiating far beyond the stands.

That, sadly, was yesterday's stadium. Today, the city's spanking-new Joe Robbie Stadium is a model of the new skybox ethic. With a 10-foot wall between the skyboxes and the stands, it offers the affluent literal insulation from fandom's hoi polloi.

Even if heavily champagned mortgage bankers aren't too worried about the American stadium's new social separations, the rest of America should be. Skyboxes, for all their cozy frivolity, speak to an essential flaw in American social life: the elite's eagerness, even desperation, to separate itself from the rest of the crowd. What's doubly disturbing about skyboxes, however, is the change they imply. Professional sports, once an antidote to status anxiety, have been stricken grievously by the disease.

The boys in blue pinstripes

It's a latter-day Secret Service man's nightmare: President Calvin Coolidge at Yankee Stadium in the twenties, surrounded by a screaming, sweating swarm. Coolidge has a choice front-and-center seat, of course, but he is also right in the thick of the crowd's tirades and tobacco spit. And he probably never gave it a second thought, since, in the first half of the century, the noise, the frenzy, the *egalitarianism* of professional sports seemed a fundamental part of the game.

In Washington at the turn of the century, when sergeants-at-arms rushed to Griffith Stadium to retrieve senators needed in committee meetings, they had to scour the stands to find them. In each of the three great New York stadiums—the Polo Grounds, Ebbets Field, and Yankee Stadium—being a direct descendent of a robber baron would ensure you a good seat between third and home, but you still had to wait 10 minutes for a soda. During the fifties, at Yankee Stadium, the price difference between the best seat in the house and the upper-deck bleachers was less than 10 bucks.

And almost as soon as there were benches to sit on, the thoughtful had begun to perceive that the mix of class and mass might have a social benefit far beyond the arena. In 1880, Morgan Bulkeley, the first National League president, actually offered up baseball as preventative medicine for revolution. "There is nothing which will help quicker and better to amalgamate the foreign born, and those born of foreign parents in this country, than to give them a little good bringing-up in the good old fashioned game of Base Ball," he argued—a tactic that would keep them from "spending their hours fussing around in conspiring and hatching up plots when they should be out in the open improving their lungs."

To be sure, Bulkeley was going a little far. But he *did* correctly fathom a ball game's power—a power that grew more precious with time. In the great educational leveling that followed World War II, people turned to possessions and activities to signify status once self-evident when they opened their well-educated mouths. The rich read *The New Yorker*, the masses read *Reader's Digest*. Some drank champagne, others beer. But as activities, costumes, and cuisines evolved from ends in themselves to a means of social identification, professional sports continued to resist the forces of stratification. It was communal. It built social cohesion. And it wasn't long before the elite figured out how to get rid of those qualities altogether.

Spectator sports' metamorphosis into a badge of social status began, not surprisingly, in the capital of conspicuous consumption, Dallas—orchestrated by the Cowboys' canny owner, Clint Murchison. In the late sixties, Murchison realized that his team had outgrown the congenial, crumbling Cotton Bowl. He wanted a big, slick, professional new stadium; problem was, Dallas taxpayers didn't want to foot the bill. So Murchison decided to capitalize on his city's great tappable resource: the nervous nouveau riche.

He talked to some law firms, some airlines, some banks. He talked to a lot of oil men. But it wasn't just

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good football-watching he was selling. No, Murchison had identified something that appealed to the corporate captains' sense of self-importance, their desire to feel different from all those other, rowdy fans. He promised them seats in the sky. A few years later, Murchison had collected enough cash from advance leases on the club suites and luxury boxes to pay for the construction of his palace. The Cowboys moved in, the boxes sold out, and Texas Stadium became the most admired and imitated facility in professional football.

Texas's sports snobs were powerfully encouraged by the federal government. Until 1988, corporations and individuals could almost fully deduct the cost of skyboxes from their tax returns as business entertainment expenses. In other words, corporations really had no incentive not to buy skyboxes: After all, they'd be forking over the same $60,000 regardless of whether they purchased a box. The only difference was that the Dallas Cowboys or some other sports organization, and not Uncle Sam, would be on the receiving end. Abetted by this skybox shelter, Miami, Minnesota, Detroit, Boston, and a dozen other cities erected stadia in the eighties with insulation for the haughty. The Toronto Skydome's best boxes are actually attached to hotel suites, so a fan can watch a game in bed while nibbling on room service (or a roommate).

The incentive for owners to build such boxes is no mystery. While stadium owners won't give exact figures, the arithmetic is easy. At Giants Stadium, there are 72 boxes selling for $95,000 each (next year, the price will increase to an even $100,000), netting $6.84 million every year. Add in the regular ticket prices (astonishingly, buying a skybox doesn't necessarily mean you get free tickets), and you've got a $10 million annual cache from those 72 boxes alone —almost half as much as the Meadowlands makes on its *76,000* regular ticket sales. That's a tidy cash bonus for the owners.

Less easy to explain, at least in economic terms, is the corporate infatuation with the box. Today, the early motivations that Murchison capitalized on have fallen away. As the affluent eighties ended in recession, cost-conscious executives began to seem more chic than the regulars at Mortimer's. And in 1988, the government clamped down hard on skybox shelters—so hard, in fact, that "luxury skyboxes" earned their own section in the tax code. Under the revised statute, skyboxes and special club seats were worth only the cost of an equivalent number of regular-priced tickets. In other words, a skybox with room for 12 was worth only a deduction equal to the price of 12 regular-priced season tickets—$6,000 instead of $60,000.

But while economic realities may change, social snobbery endures. Today, even corporations on the ropes still gladly shell out the big bucks for boxes. At least four S&L-owned skyboxes have fallen into the hands of the Resolution Trust Corporation in the past two years. Ford and GM each posted $2 billion losses this year, but they still maintain boxes in the Pontiac, Michigan, Silverdome. "You don't eliminate everything just because you have bad times," explains Duncan Muir, spokesman for J.C. Penney, which maintains a box at Texas Stadium despite declining revenues. That's clearly the principle adopted by Florida's Southeast Bank. As it reported quarter after quarter of significant losses, eventually filing for bankruptcy, the firm refused to rid itself of its 10-year box lease. Now First Union National Bank, which bought Southeast a few months ago, claims Southeast's box as one of several in its own collection.

What corporate gains actually transpire in those precious glass cages? "You're asking questions I'm obviously not going to answer," Muir snaps. "That's confidential information about our business practices." But a few skybox users are willing to divulge such proprietary information. "I've taken my entire family up there," grins one Wall Street trader who frequents the firm's box at Madison Square Garden. And, boy, did they have fun, chowing down on platters of crudités and chicken wings. "Nobody cares because it's already paid for," he explains.

Above the crowd

The real harm of skyboxes is directed not at stockholders but at the public at large. The construction of special skybox levels, particularly in newer arenas where luxury levels have become even greater spectacles, creates stark physical divisions that endorse the kind of social hierarchies of race and class already so pervasive in nineties America.

The proof is in the not-so-subtle snobbery boxholders exude with every bite of their shrimp cocktails. Gene Kennedy, spokesperson for First Union National Bank, justifies his company's boxes at Joe Robbie and Tampa Stadium by noting businessmen's desire to "have more control over the surroundings. . . . You know there's not going to be anybody behind you who's really obnoxious." As Ford Motor Company spokesman Gene Koch advises, "Rank does have its privileges, and there are certain opportunities that aid in the establishment of prestige and a certain image."

While seat users implicitly accept that hierarchy of wealth every time they use their exclusive parking lot and float on their private escalators through the

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The Washington Monthly

JOURNALISM AWARD

FOR SEPTEMBER 1991 IS PRESENTED TO

Jane Brody, Gina Kolata, and Elisabeth Rosenthal
The New York Times

Jo Ann Anderson's son was born 17 weeks premature. Thanks to aggressive treatment and the wonders of modern medicine, tiny Aaron was saved. But today, two years later, Aaron has cerebral palsy, is virtually blind, and is a quadriplegic. Looking back, Jo Ann Anderson says, she should have discontinued Aaron's life support when he was born. "There is no need" she says, "for anyone to suffer like this."

These days, more than 80 percent of premature babies survive; most suffer no major disability as a result. But improvements in technology have meant not only that more healthy babies are saved but that more babies with severe handicaps live. For a health care system already straining to cover the cost of caring for the elderly and chronically ill, the cost of preserving the life of these severely handicapped infants is a heavy burden. Reporters Brody, Kolata, and Rosenthal, in a three-part series between September 29 and October 1, paint a painfully vivid picture of the issues—financial and emotional, medical and social—of preserving life by any means necessary.

The Monthly Journalism Award is presented each month to the best newspaper, magazine, television, or radio story (or series of stories) on our political system. Nominations for any newspaper, magazine, or radio or television station in the country are welcome. The subject can be government in its federal, state, or municipal manifestation. Please send nominations to Monthly Journalism Award, 1611 Connecticut Ave. NW, Washington, D.C. 20009. Two copies of the article or broadcast text should accompany the nomination.

Nominations for stories published or aired in November will close December 15. The winner will be announced in the March issue.

crowd to their suites in the sky, the class alienation promoted by skyboxes isn't always such a subtle phenomenon. The message comes through concretely every time rain soaks Joe Robbie Stadium. Because of a design quirk, water that collects in the upper deck drains through holes in the upper deck wall. The club seat patrons are protected by an overhang; the runoff tumbles through the holes onto the spectators in the bleachers below.

Shed two tiers

Yes, yes, you say, but what of it? The rich have been lording it over the poor since Lazarus kicked the bucket at Dives's gate. Why should we expect Giants Stadium to be any different? Because it *has been* different. While professional sports have willingly contributed to some of society's most malignant evils (materialism, sexism, egomania), they have seldom been promulgators of pretension. And that traditional egalitarianism has never been more necessary than it is now, as America's delicate social balance becomes increasingly strained. As Kevin Phillips and other political watchers have shown so powerfully in recent years, it's not just that the gap between rich and poor grew wider in the eighties, but that the rich seemed less and less willing to acknowledge that the gap exists—while at the same time more and more willing to put themselves at a safe distance. It may seem far-fetched to suggest that mere games could connect the classes, but as long as there's been a team to root for, history has borne it out. In Chicago, L.A., and Boston, the very experience of watching a team could and did build cohesion among diverse racial, ethnic, and economic groups. That's an opportunity few of America's urban centers should overlook today. Unfortunately, nobody's looking.

The abolition of the two-tier stadium may not renew America's lost compassion, and it may not heal cities' racial wounds, but it would provide, as it used to, a forum in which people of all backgrounds might gather for a common, celebratory purpose and come away feeling good about their team and their town—as they used to in the heady days of the old Orange Bowl. There, blacks, whites, and hispanics would sit side by side, linked for a brief but important three hours by a tiny fiberglass bench and a shared enthusiasm for their hometown team. It was never a lovefest—the frequent fights among inebriated patrons were testimony to that. But it was often a first step toward community understanding. And in the long haul, that's a far more meaningful pleasure than any that can be had ensconced in a sterile concrete booth. □

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Nonprofiteers

How to lobby like a corporation and pay taxes like a charity

by David Shenk

A brief role-play exercise: Let's say you can't stand Jesse Jackson. You've seen the man on TV, rabble-rousing in verse, and you wish you could take him on, just tell him to shut up. But you're a working stiff of modest means. What could you possibly do that would have any effect?

One day a letter drops through your mail slot. An "alert" message on the envelope catches your eye. "Jesse Jackson wants you to pay his salary and $3.5 million in benefits." Inside, a letter from the American Conservative Union (ACU) reads, "Jesse Jackson has never been elected to any legitimate office. And outside of Washington, he probably never could be. So he and his liberal friends have launched a campaign to make crime-ridden and corrupt Washington the 51st state. . . . Jesse wants power. . . . And Jesse often gets what Jesse wants."

Your blood stirs. You always knew that guy was up to no good. Whatever they want you to sign, you'll sign. Maybe even throw in a cash contribution, *if* you can write it off.

But then you see the fine print—"Contributions are not tax deductible." Jeez—don't they have tax deductions for pornographic art and other filth? Why not for this?

Just in case, you phone the ACU:

> "Hi, are donations to the ACU tax deductible?"
>
> "To the ACU Foundation, they are."
>
> "Well, um, I just got a mailing concerning Jesse Jackson and statehood. . . . I noticed it says that donations to that project are not tax deductible. But is there any way I could give money to it so that it *would* be tax deductible?"
>
> "Well, you could give to the ACU Foundation, which provides most of the research for that project, finding out quotes and stuff like that."

David Shenk is a Washington writer. Research assistance was provided by Jennifer Bradley, Eric Konigsberg, and Dan Rocconi.

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Hot damn—now your $100 donation is going to cost you only about $75! U.S. taxpayers, by means of the federal government, will pick up the rest of the tab for denigrating Jesse.

I made the call myself this summer, and had I been of a pro-ACU mind, I could have sent a check and taken that deduction. Why could the ACU say donations were not deductible, then turn around and tell me I could write mine off? Because, like many other nonprofit groups, it's two legally separate organizations rolled into one. The first is for government-subsidized lobbying and demagoguery; the second for even more subsidized "research" in service to the main. Smell fishy? Welcome to the murky sea of nonprofits.

That America's 500,000 nonprofits are exempt from income tax (and in some states, sales tax) while they gross more than $700 billion a year is not inherently a bad thing. Indeed, the philosophical rationale for this exemption is both practical and humane. Because government alone clearly can't feed all the poor and train all the unemployed and so on, it makes sense for government to help nurture those organizations willing to serve the public interest on their own. Trouble is, as we subsidize their postage stamps and their lobbying and their "educational" conferences at Vail, only a fraction of those half-million nonprofits perform what most of us would consider public interest functions—the great rationale for tax exemption. That's bad enough. But more disturbing is how nonprofit political lobbies like the ACU, already having it so good, have manipulated a tax-law loophole to have it even better—at taxpayer expense.

Those 501 blues

Political lobbies and do-good groups like The United Way have traditionally operated under two completely distinct tax codes, each of which has one big pro and one big con. The "charitables"— nonlobbying groups like the Urban League and Brookings Institution—have long been able to attract individual donors more easily because donations are tax deductible. Meanwhile, "noncharitables" such as the Tobacco Institute, the National Rifle Association (NRA), and the National Abortion Rights Action League (NARAL) can't offer the tax deduction, but they *can* lobby like there's no tomorrow. Unfortunately for taxpayers, though, nobody knows how to work the system like the nonprofits' policy wonks. It was only a matter of time before the noncharitable lobbies figured out that, thanks to the see-no-evil IRS, they could con the government into subsidizing their supporters' donations.

The two breeds of nonprofit are commonly identified by their treatment under section 501(c) of the IRS code. Noncharitables—advocacy groups and lobbies—are untaxed, but their donors cannot take a deduction under 501(c)4, at least not in theory. (Though not tax deductible as "charity," donations to industry lobbies are often written off as "business expenses.") 501(c)3s, also untaxed, are supposed to be a higher and purer form of life, conducting research, educating the public, checking into the powerful institutions of government and industry, but not soiling their hands with lobbying or advocacy—hence the deduction. The word "institute" or "foundation" in its name usually identifies a c3.

A lot of nonprofit money is no doubt spent wisely and honestly. Unfortunately, however, some "charitables" manage to carry on in a rather corporate manner. "When I first went to work for a nonprofit," says Leslie Lenkowsky, the former president of the Institute for Educational Affairs and now president of the Hudson Institute, "someone informed me that there were three things that I would never have to worry about again. One is I would never have to eat in anything less than a first-class restaurant. Secondly, I would never have to stay in anything but a first-class hotel. And lastly, I would never have to deal with anyone telling me to my face what they actually think of me."

Is Lenkowsky too cynical? Follow me, if you will, to the dining room of the American Enterprise Institute (AEI), another c3, where the fine silver is complemented by china place settings with the AEI logo. Or go uptown to the NRA, where the direct mail writer, Brad O'Leary, gets hundreds of thousands of dollars a year to compose press releases touting such worthy events as a Celebrity Shoot in Los Angeles featuring appearances by Charlton Heston and Chuck Norris. Or visit the chandeliered University Club of Washington to hear Robert Novak or William Bennett lecture college kids, thanks to the largess of the conservative Madison Center for Educational Affairs. "There wasn't a domestic beer in the place," recalls one attendee approvingly. "It was all Moosehead and Heineken, and great food."

So what's the big deal? you ask. *I'm not giving money to them. They can buy whatever beer they like.* That's the argument the libertarian Cato Institute implicitly invokes in one of its pamphlets: "In order to maintain an independent posture, the Cato Institute accepts no government funding." Of course, that rugged independence doesn't keep Cato from battening on federal tax exemptions in any number of ways. A pamphlet from the institute, which touts itself as a government waste watchdog, mentions a re-

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cent "Benefactor Summit" on St. Thomas—tax-exempt, naturally. And yes, your contributions to the Cato Institute are tax deductible—which means the federal government is quietly chipping in plenty. Say I'm in the 28 percent tax bracket. My net cost for a $100 donation to Cato is $72. The rest of America pays $28 to cover my write-off. Call it libertarian license.

Split identity

Of course, all 235 million of us can split that $28 pretty easily. But these things have a way of adding up. Total deductions for charitable contributions taken by individual taxpayers added up to nearly *$51 billion* in 1988. That subsidy was so enormous that the lobbying nonprofits had to notice. And they had to have a piece of the action—hence the birth of the c3/c4 split.

In the early seventies, as various public and private political institutions emerged from the turmoil of the preceding decade, archconservative Richard Viguerie was tinkering with databases and envelopes. Direct mail fundraising, he reckoned, would be an essential part of Washington's future. He was right. Special interest money poured in, establishing enormous PACs and other advocacy groups. But contributions still weren't tax-exempt until Jesse Helms came along.

When the North Carolina senator wanted to raise some money, he hired Viguerie, and in so doing became the first to mate the noncharitable studhorse with the charitable mare and breed the hybrid worth billions in government subsidies. Attempting to establish a power base, Helms and his associates started by getting Viguerie to help them set up a series of fundraising and lobbying groups. The first of these were noncharitable c4s: the Congressional Club, Conservative Caucus, Committee for the Survival of a Free Congress, and a PAC—the National Conservative Political Action Committee.

The next step was for James Lucier and Joseph Carbaugh, Helms aides who had engineered the first batch of groups, to test the charitable waters with a parallel set of c3s: Coalition for Freedom, Institute of American Relations, Institute on Money and Inflation, and American Family Institute, all run by the same people for the same ends. Helms himself openly admitted to the charade of the Coalition for Freedom to *The New Yorker* in 1981: "I think [Carbaugh, Lucier, et al.] figured they could be more effective raising money if [citizens targeted by direct mail] didn't have a letter every week from the Congressional Club." Besides which, the Coalition donations would be tax deductible.

Over the next few years, Helms raised tens of millions of dollars and generated reams of "educational" printed material designed to bring colleagues around to his way of seeing things. Tax-deductible money was also used to cover salaries and fund airplane tickets and lavish lunches. (This is the same frugal Jesse Helms, you might recall, who raised a national furor over a few thousand dollars in art subsidies.) Before long, Helms's two-pronged nonprofit attack had earned him a reputation as one of the loudest and most influential senators. But even more important, the "c3/c4 split" begat more splits, as noncharitable advocacy groups began erecting "educational" foundations to perform research and other less overtly partisan functions.

The second great galvanizer was a 1983 Supreme Court case, *Taxation With Representation of Washington* v. *Donald Regan*. The c4 nonprofit, which advocated statehood, was trying to become a c3. The group lost the case, but in the opinion, Justice William Rehnquist pointed out plainly that a c4 had an alternative: It could set up a complementary c3. "What that case did was give people more confidence that it was legal," says Mike Trister, a tax lawyer who has represented dozens of nonprofits for Lichtman, Trister, Singer, and Ross. "[It] loosened up the IRS's attitude about it and encouraged us on the outside."

Thus, today, split groups abound on both right and left, including NARAL, Fund for a Feminist Majority, American Security Council, Friends of the Earth, Gun Owners of America, SANE/Freeze, the ACLU, and hundreds more. In fact, these days, even the teensy National Community Education Association of Alexandria, Virginia, has a "National Community Education Foundation" to take tax-deductible contributions. The c3/c4s share offices, staff, directors, equipment, donors, and of course, political views. Not surprisingly, in offices where split groups have virtually the same names and resources, both the finances and the politics often become hopelessly entangled.

Helms's Conservative Caucus's c3/c4 set-up includes such a vague arrangement of shared equipment and employees. Although 1989 tax returns show that the c3 Conservative Caucus Research Analysis & Education Foundation earned roughly 17 percent of the income of the c4 Conservative Caucus, Inc., the foundation paid nearly 30 percent of the total wages. The Caucus returns also show a $78,000 "consulting fee" to a separate Howard Phillips Corporation—Phillips is listed as "full-time" chairman of the Caucus—on top of Phillips's regular $134,000 salary. Though one fundraising event grossed $1,133,072, the expense charge came to $927,421,

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leaving net proceeds for the Caucus at a piddling $205,651, 40 percent of which went straight to Richard Viguerie as payment for his efforts.

Our friends to the left have been similarly culpable in mixing their nonprofits. People for the American Way, the First Amendment group set up by television producer Norman Lear, has a c3 foundation, which took in $3.5 million in 1989, and a c4 "action fund," which that same year took in $2.7 million. But the c4 paid only one eleventh of the salary of President Arthur Kropp, who supervises both operations. And there are other apparent imbalances, such as a payment four times as large from the c3 than from the c4 for the services of lawyer Mike Hudson, and consulting fees of $38,074 to Anthony Podesta and $30,000 to David Cohen from the c3, but nothing for either from the c4, where they serve on the board of directors.

None of this necessarily indicts these two organizations. It is entirely conceivable that all of the payments are being made in proportion to the work carried out for each organization, and that everything is perfectly legal. But, to apply George Bush's standard, this is certainly not above the appearance of impropriety. Not by a long shot. But Helms and Lear needn't worry. Inherent in the current system of legally sanctioned identical twin organizations is the virtual assurance that the truth about millions of financial transactions will never be known.

Bork-barrel subsidy

While nonprofits have grown rapidly in number and influence during the past 20 years, oversight and restrictions have eased steadily, most recently in the form of an IRS rules clarification of late 1990, born out of the Robert Bork battles of 1989. While there was previously a general assumption that charitables would not lobby very much—the statutes were remarkably vague—the way "charitables" such as the Alliance for Justice lobbied against Bork's nomination irked conservatives enough to press for a formalization of rules. Today, charitable groups can spend no more than $1 million a year on lobbying, or, if they're a small organization, no more than a fifth of their funds. But while appearing to crack down, the IRS also loosened up, narrowing its definition of lobbying to the point where a solicitation can now look, walk, and quack like a lobby, but unless it specifically asks respondents to send letters to Congress, it's not called a lobby.

"[Charitables] aren't supposed to do something that's one-sided," says David Jones, spokesman for the IRS. "[T]hat has historically been true." But over the years, the "nonpartisan" or "propaganda" test has given way to a new standard. Now, says Jones, "you can . . . be generally consistent with a party's political line," as long as you pass an educational "methodology" test of the procedures for investigation and reporting. The regulation states: "The method used by the organization will not be considered educational if it fails to provide a factual foundation for the viewpoint or position being advocated, or if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process."

Could TransAfrica, the pro-African National Congress group with an in-office foundation that publishes "educational" pamphlets and sets up conferences, pass that test? Senator Ted Kennedy once said of Randall Robinson, TransAfrica's director, "Robinson has been the 101st senator in all our debates on apartheid." Robinson and his outfit may deserve credit for maintaining U.S. economic and political pressure on South Africa during the eighties, but do their forums and pamphlets truly serve as purely "educational" organs?

Probably not, but who's watching? Certainly not nonprofit media like *Nonprofit Times* and *The Chronicle of Philanthropy*, neither of which has written about the split-scam. Independent Sector, America's largest umbrella group for nonprofits, has been lobbying hard to keep the loopholes open for nonprofits rather than close them. As for traditional lobbyist watchdog Public Citizen—well, it's a c3/c4 split.

Still, nonprofits have never been very good at watching themselves, which is why we have the IRS. Surely the government must be watching to ensure that lobbies and researchers stay on their own side of the bed. Nope, admits Jones, the IRS spokesman. In fact, the IRS doesn't even know how many splits there are. "It's mostly an issue when organizations are applying for recognition of an exemption—they have to show us that what they're doing is charitable. Once they're established . . . I'm not sure that in recent years we've really made an effort to try to make sure that every organization that claims to be educational [actually] is."

That's why lobbies with the good sense to keep clever tax lawyers on their payrolls have managed to slip through the cracks in the regulatory codes with astonishing frequency. As with the Jesse Jackson/ACU incident, one can designate a check for a "foundation" and still have the money go toward the desired lobbying, thus allowing a deduction. Even worse, many times in the course of investigating this story I found myself listening to some lobby representative announcing incorrectly that contributions were tax deductible, usually as an "innocent," though crucial, error. Some c3/c4 mailings read "nonprofit"

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without saying "not deductible"—a federal reporting requirement for nonprofits. As a result the donor is implicitly encouraged to give and deduct. Illegal, yes, but this is the sort of violation that sneaks by without drawing an audit. In addition, virtually all c3 and c4 mailings are sent out on the special nonprofit bulk mail rate of 9.4 cents, as opposed to the 16.7 cents for standard bulk mail. Thus the IRS-created barrier designed to separate the charitable from the noncharitable often, conveniently, disappears.

How serious are the transgressions the IRS is prone to overlook? Pretty serious. Take, for example, the "charitable" Heritage Foundation, which provided money—up to $100,000—for the contras through Oliver North and Carl "Spitz" Channell. That transaction indisputably violated the "educational, nonpartisan" condition of Heritage's tax status. But despite the fact that the smoking gun was uncovered in Congress's Iran-contra investigation, neither Congress nor the IRS pursued the foundation. Why? Allegedly because then-Congressman Richard Cheney threatened to retaliate with subpoenas of the records of every liberal think tank in Washington.

Feeding friendly

There's one very simple reason why we're stuck with lax enforcement of lax rules: The nonprofit game has virtually zero political opposition. Groups that specialize in exposing government waste and fraud have, understandably, neglected to turn the spotlight on themselves.

One way to apply that pressure would be to form a 501(c)3 Institute for Critical Study of Tax-Exempt Organizations (to raise money and apply for research grants) and, in the same office, a 501(c)4 Coalition to Curb Nonprofits Now! (to handle lobbying). But without such an unlikely pair of self-destructing groups, there's nothing in sight to inhibit the nonprofits' drain on the treasury. Because the groups span the political spectrum, nonprofit reform isn't any party's plank, and cozy relations between established nonprofits and incumbent politicians mean that Congress isn't likely to press the IRS for tighter oversight. And with nonprofits providing rich sources of official-sounding quotes from every known political angle at daily "educational" forums, not even journalists dare to take note.

There is, however, one backdoor hope for reining in the sector: the awesome federal deficit. For that noble politician who wants to cut a hefty slice off the debt without being unfair to any segment of the country, here are a few simple reforms:

➤Call a subsidy a subsidy. The habit of veiled subsidies doesn't improve the nonprofits any more than an addiction to price supports enhances American agriculture. So let's eliminate tax write-offs for charitable organizations altogether and replace them with cash. For each $72 contribution to the Cato Institute, say, the treasury would ante up $28. The economics would stay the same for everyone involved, but perceptions would begin to match reality.

➤Require full disclosure. A nonprofit's privilege should come with a responsibility to bare its finances—not only in an annual report for insiders, but in regular mailings to contributors. Government subsidies, consultant contracts with members of the Board, and the cost of that "summit" on St. Thomas should all be listed.

➤Strengthen oversight. Government inspectors should pay particular attention to the c3/c4 "split" nonprofits, and should audit transfers between them. Right now the IRS has no system for tracking c3/c4 splits. A spokesman said that the agency deals only with individual nonprofits on an individual basis. In our computer age, there's no excuse for that.

➤Conduct spot checks with fines. In other words, combat the frequent, "accidental" suggestions by nonprofit staffers that contributions are tax deductible.

The principle is simple and compelling. The legitimate "common good" promulgated by charitable nonprofits *is* worth nurturing—honestly and overtly, in exchange for clear accounting of funds. But it is better to support the political causes we believe in with our own dollars, not the government's, no matter how worthy our goals. In the end, it shouldn't matter whether it's Jesse Jackson or Jesse Helms you want to nail to the wall. The government just shouldn't be paying for the hardware. □

Coming in the January/February issue of *The Washington Monthly*...

Nicholas Lemann on the Death of the WASP

and

Michael Lewis on the Self-Destruction of Michael Milken

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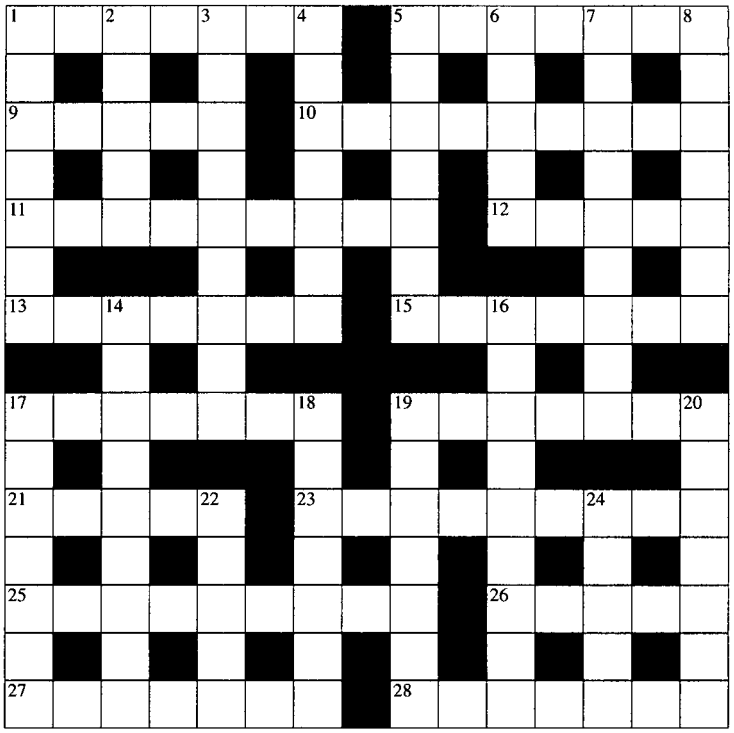
POLITICAL PUZZLE

by John Barclay

The numbers indicate the number of letters and words, e.g. (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g. USA, are treated as one word.



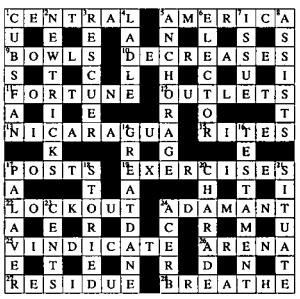
ACROSS

1. Bizarre neigh around park center for Washington show. (7)
5. Thomas now is merely hard water? (7)
9. Kind of health food with vitamin. (5)
10. Tennessee piece played out of contrition. (9)
11. Awkwardly lops these strays. (4, 5)
12. Change tire around five for fastener. (5)
13. Eliminates act and falls asleep after last speaker. (7)
15. Programmed dieters moved to new position. (7)
17. Adapted same car for image makers. (7)
19. Light types send lob in different directions. (7)
21. One of two columnists involved in Rosenthal's operations. (5)
23. Tiny neon display set up before exercise begins today. (6, 3)
25. Newspapermen score in little streets. (9)
26. Block traffic, i.e., put in a mess. (3, 2)
27. Establish inmate business? (7)
28. Incorrectly presume the best. (7)

DOWN

1. Poor Walker put shot in hole before reflecting first. (7)
2. Collect for one rite? (5)
3. Bent pin raised without hope. (2, 7)
4. Republican woman's animals. (7)
5. Evergreen turns unripe after first of January. (7)
6. Mythical creature has rats running around YMCA. (5)
7. Used fresh ideas and put funny vote ad behind hotel. (9)
8. Chose to let EEC organization appear before start of debate. (7)
14. Develops strength in pop's rum mixture. (5, 4)
16. One of nine playing hot sports. (9)
17. Famed young lady adds one in 200. (7)
18. Special bus name for light course. (7)
19. Subs one organized for unexpected benefits. (7)
20. Made Lee step over this church feature. (7)
22. No ZIP code for this scam. (5)
24. Overweight doctors, we hear. (5)

Answers to last month's puzzle:



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Recreation Without Taxation

When it comes to corporate junkets, the IRS line is: Don't tax 'em, join 'em

by Scott Sleek

It was like a working vacation in heaven. With only a few hours devoted to the obligatory meetings, the employees got a chance to frolic on racquetball and tennis courts, test their prowess against championship golf courses, relax in a sauna, and glide on bicycles through piney glades. But these weren't just any paper-pushers relieving a little occupational stress. Enjoying this annual three-day getaway in Pennsylvania's Pocono Mountains were about 190 managers from the Internal Revenue Service. Guess who picked up the $88,000 tab? That's right—you did.

The agency describes the retreat as vital "continuing education," with a full schedule of work-related discussion and activity. Topics included managing a culturally diverse workforce, dealing with difficult people, and harnessing "the power of laughter." Among the other educational offerings were an evening hayride and bonfire, water volleyball, two 45-minute sessions of body toning, and a talent show. In the end, only about 16 out of 50 hours of activity were officially devoted to business. If, in fact, the workers did spend 16 hours sharpening their skills, then the conference might seem to have some slight professional justification. But don't be fooled. In general, as attendees at such conferences well know, the choice between sitting in class or sitting in a hot tub doesn't provoke a whole lot of soul-searching.

The Poconos retreat last June wasn't the only sweet bonus accorded the people who collect our taxes. IRS employees, particularly management personnel, have enjoyed a variety of pricey perquisites over the past year. They've been treated to seminars at expensive beachfront resorts and mountain retreats, health club memberships, and even cash awards for helping to throw a party.

Scott Sleek is a reporter for columnist Jack Anderson.

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Of course, such merriment isn't limited to the IRS, as the agency defensively points out. From grandiose office decor to limousine service to first-class flights, self-indulgent spending is a sanctioned sport throughout the federal government. But bureaucratic hedonism is particularly distasteful when it's practiced by the IRS. The image of the stereotypical taxman, after all, is that of an ascetic in a cheap grey suit grimly toting up columns of numbers—not of a frat boy in a Hawaiian shirt guzzling beer at a keg party. These are the people who expect us to report our income with the highest degree of honesty and accuracy, the ones who, when they feel we've fallen short of that standard, can impose fines, seize our cars and homes, garnishee our wages, and humiliate us before our neighbors. It's a little disturbing to discover that the very agency that should be cracking down on the deluxe, deductible "educational conference" is joining in the scam as gleefully as the American Medical Association or the nation's sybaritic bar organizations.

Buffalo bills

A chief function of tax collectors is to catch people who—either by honest mistake or fraud—fail to pay their fair share. It's a noble and daunting task, considering that Americans short their government tens of billions of dollars annually, contributing mightily to the federal deficit. IRS officials say that Congress only recently started giving the agency the money it needs to hire more agents and modernize its technology—steps expected to beef up collections. Yet, all along, these officials have somehow found plenty of money to transform office work into off-site parties.

While only a small percentage of IRS conferences are held "abroad," some taxmen prove you don't have to travel far from home to live it up. Last May, Donald Mitgang, director of the Buffalo district office, hosted an IRS executives' conference at the Radisson Inn in nearby Niagara Falls. Several of Mitgang's employees were yanked away from their calculators to cook for the visiting hotshots, *The Buffalo News* reported in June. Other workers made sandwiches or fetched beer, soft drinks, and snacks for their weary superiors. Some tended bar or served as hostesses at cocktail parties. Still others acted as chauffeurs or sightseeing directors on local trips for IRS executives and their families. The taxpayers were even kind enough to rent a van for these outings.

And in the end, about 10 employees were awarded cash prizes for their work at the conference. At least two of the honorees refused the money, questioning the use of government funds for baked goods and cocktail parties. Upon hearing those complaints, the IRS referred charges of wrongdoing to the U.S. Treasury Department's inspector general, who is still investigating the matter.

A month after the Buffalo party, reports surfaced that the IRS's national office was purchasing memberships in a conveniently located spa for staff stationed at its L'Enfant Plaza annex. The arrangement saved the workers a 10-minute walk across the Mall to the gym at IRS headquarters on Constitution Avenue, which offers stationary bicycles, weightlifting equipment, even aerobics sessions. The IRS claimed the investment in the private club made sense: It would help improve employees' health, making them more productive. But the agency decided not to renew its memberships after Rep. Scott Klug, complaining that the benefit could set a precedent of taxpayers funding private health club memberships for federal workers across the country, sparked a congressional investigation into the matter. "I've got no arguments whatsoever with the IRS concerns about the health of their employees," Klug said. "I think they'll get healthier walking across the Mall to the gym."

The taxman slummeth

The IRS claims that such expenditures, although they may look bad, are proper not only for a government entity but for any employer. Seminars, for example, improve workers' skills. "The expectations of the public are that this agency is held to a standard higher than any other agency in the federal sector," says Ellen Murphy, chief IRS spokeswoman. "However, we have an obligation to the public to have employees—who serve them—who are productive, well trained, and can carry out the service the public expects of them."

The agency has had some trouble meeting those expectations in recent years. While letting billions in unpaid taxes slip past, the IRS itself until recently had annual budget shortfalls of nearly $500 million. The workforce was too small and poorly trained. Newly hired accountants were reported to be scoring at the bottom fifth of standardized tests for entry-level professionals. Hampering the agency's credibility as much as the operational problems were the ethical breaches exposed during a series of congressional hearings beginning in 1989. A subcommittee chaired by Rep. Douglas Barnard discovered, for example, that an IRS staffer had launched a tax investigation against someone who had sued him. A top official in Los Angeles investigated the enemies of a group of businessmen with whom he was seeking a job. And three managers in Cleveland, claiming to be on an

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undercover mission, spent federal funds joyriding on a government boat during working hours.

All these problems fell into the lap of Fred Goldberg, who became IRS commissioner in 1989. An amiable tax attorney, Goldberg worked at the IRS off and on during the Reagan administration, between stints in the private sector. The new infusion of cash from Congress is helping Goldberg attack the agency's operational problems. As for the scandals, one of Goldberg's primary ventures is to inject a healthy dose of ethics training into the agency. "The public must have confidence that each Internal Revenue employee is held to the highest standards of professional and ethical conduct," he told Barnard's subcommittee in July. Unfortunately, the highlights of this new ethics campaign were two training seminars at a cozy West Virginia mountain resort, about two hours from Washington, D.C.

IRS MIA

The CoolFont Resort & Conference Center, according to its brochure, includes a solar-heated indoor swimming pool, exercise equipment, a whirlpool, a sauna, and a spa for massages and facials. (The participants were kept too busy to enjoy the facilities, the agency insisted.) A private consultant was hired to conduct the four-day seminars, one in February and another in March, for 53 IRS managers from across the country. The trainees were taught how to conduct ethics sessions for their colleagues back home. The cost of the program was $1,850 per person, plus travel expenses.

The Justice Department's Office of Government Ethics (OGE) provides a variety of ethics courses to all federal employees, free of charge. IRS officials, however, said they wanted something more extensive than Justice's curriculum. Rather than just teach the ethics laws, which is what the OGE covers, the program focused on ethical principles and concepts broader than those in the rules. In essence, IRS managers spent federal funds at a resort to learn to avoid even the appearance of wrongdoing. Hmmm.

That coursework apparently hasn't paid off. For example, not long after the Poconos retreat in June, about 150 attorneys from the IRS's southeast region were treated to a continuing legal education conference at Pier 66 Resort & Marina in Fort Lauderdale, Florida. In its brochure, the resort is described as "lush," with private balconies overlooking the water, telephones in the bathrooms, daily cruises to the Caribbean islands, waterfront tennis courts, a world-class marina, parasailing, snorkeling, yachting, massages, and free shuttle service to the beach. The four-day event, which cost the government $100,000, was held primarily to help the lawyers get the training they needed for their annual state license renewals. Assuming they made it to class between tanning sessions, the attendees ruminated on tax court rules and procedures, new developments in criminal tax law, and trial preparation—issues that could perhaps be more easily discussed without seagulls crying and waves crashing just outside the door.

If these outings reflect the example Goldberg hopes his IRS will set for the taxpaying public, then his efforts to encourage better compliance may be in for a rough ride. Americans will never be gleeful about paying money to the government. The least they can expect is some degree of fiscal integrity from the bureaucrats who routinely carve a hunk out of their paychecks and often demand even more come tax season.

The tax-deductible conference is one of the great con games that unites the middle class with the rich against the rest of America. Since everyone with any power is able to play, who's going to raise a fuss? And that's what is ultimately so disturbing about the IRS's taxpayer-financed vacations. Rather than sipping mai tais and yukking it up with doctors, lawyers, educators, and the rest of the tax cheats, the nation's taxmen shouldn't just be setting a better example—they should be breaking down the doors and busting up the party. □

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The Organization Woman

The real reason Anita Hill stayed silent

by Katherine Boo

After Benito Mussolini's death in 1945, secretary after cabinet wife after maid came forward to declare that she had been raped by Il Duce. One woman described to a biographer being thrown on the floor and ravaged brutally on repeated occasions. Repeatedly? asked the horrified biographer. Why did you go back?

One cannot, the woman replied coolly, "refuse a man of such importance."

Alan Simpson was befuddled. It would remain, he said wearily, "a puzzlement for me forever." How could it possibly be that an intelligent, educated woman would continue a relationship with a man who had showered her with such a "foul, foul presentation of verbiage," who had inflicted upon her the greatest humiliation of her life? "I shall never understand that," the senator concluded, "and it remains one of my great quandaries."

It was the gravamen of the trial of Anita Hill during Clarence Thomas's confirmation hearings: the unsettling notion that, after so much humiliation, Hill would follow her boss to the Equal Employment Opportunity Commission (EEOC) and continue her relationship with him through phone calls and social gatherings throughout the decade. That sustained contact was one of the few undisputed facts of the case. It was the *why* that no one seemed to agree on.

To Democrats, Hill's behavior placed her in the classic category of the repressed and long-suffering victim. To Republicans, it showed she was a liar. But as 14 of the most ambitious men in America pondered the psychic mysteries of Anita Hill, none seemed to recognize that the woman in front of them was not much different from them. Hill wasn't delusional.

Katherine Boo is an editor of The Washington Monthly. *Research assistance was provided by Coates Lear.*

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She wasn't totally helpless. And to the American working woman, she sure wasn't very mysterious. Could it be that, for all her religious sensibility, all her suffering, Anita Hill was a careerist? Perhaps, like thousands of senators and investment bankers and, uh, Supreme Court nominees before her, she chose to compromise herself to advance her own career.

I believe Anita Hill. I believe her recounting of implied threats, insinuating language, sexual pressure. I suspect Clarence Thomas is a dangerous man. In fact, that's my problem with the people who now cast Hill as some sort of reluctant Joan of Arc. While the majority of Americans didn't quite accept that a sane woman would endure so much psychological strain simply to keep a job, poll after poll showed that many professional women do. Congressional phone lines crackled with sympathy and outrage; women in pumps took to the streets bearing militant signs. As one *Village Voice* writer exulted, "Anita Hill is the black woman I've been waiting to see on TV all my life."

Yet as women chisel the modest Hill into a latter-day feminist hero, they may be validating a radically unfeminist, unheroic choice. As Hill indicated explicitly and unapologetically during her testimony, given the choice between doing the right thing and making the right career moves, she repeatedly chose the latter. It was a "reasonable" choice, as Hill put it during her testimony. It was also a selfish one. And that's a distinction worth remembering, because it tells us something, not just about Anita Hill, but about ourselves.

As women who work daily in an unaccommodating world, we may justify Hill's decade of silence because we've come to accept the moral calculus that undergirded it—the necessity of muting one's principles in the name of some future professional accomplishment. That alienating ethos, once largely the province of men in gray flannel suits, is now so entrenched in the working woman's world that few of us step back to examine its moral implications. But Anita Hill's choice of silence, if we're willing to see it, is a study in those implications.

Sexual harassment, especially when chained to threats of professional sabotage, is a peculiarly insidious kind of victimization. And in today's world, coming forward to testify to one's victimization—to publicize a private humiliation—may be even more painful than the harassment itself. But the supporters who use these two truths to make Hill's passivity more palatable might better use them to disdain it. By refusing for 10 years to speak out against her patron—not just to stop the man perpetuating the evil, but to set an example for other women or minorities facing discrimination—Hill *hurt* other women. Indeed, if we remove the mantle of sisterhood that disciples have draped on her actions, we find, not a feminist martyr, but the philosophical kin of Clarence Thomas, that stalwart opponent of affirmative action. *I survived, didn't I?* Hill's choices seem to say. *Now let everyone else sink or swim on her own.*

Yes, it seems coldly idealistic to suppose anyone should jeopardize her career for some amorphous public interest—and colder still when that person is a young black woman who eventually came forward only to find *her* character on trial. But it's important for women to acknowledge, no matter how caught up we are in the quest for professional equality, that she—we—could have. Women can choose principle over professional status; they can decide that integrity matters more than a rung up on

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the corporate ladder. Anita Hill didn't. And as women raise her up today, we may also be lowering our standards for both personal virtue and a more humane working world.

Star struck

Jesse Jackson compared her to Jesus, and the press wasn't too far behind. *The New York Times* attributed her coming forward to "the moral courage of Eleanor Roosevelt." *Time* invoked Harriet Tubman, Sojourner Truth, and Rosa Parks. But as Anita Hill's testimony made clear again and again, sacrificing in the name of honor—the standard barometer of courage—wasn't really her modus operandi. She eventually stood and fell on principle, but only when it came at minimal professional cost.

Why did Anita Hill decide to speak out now? She came forward, Hill explained to the committee, because "my career is on solid ground."

During her testimony, Hill described the harassment by Thomas as one of the most "embarrass[ing] and humiliat[ing]" experiences of her life. His conversations with her were "very ugly. They were very dirty. They were disgusting." At one point, she noted, the stress his actions provoked caused her to be hospitalized for five days. Yet Hill chose to endure. "Perhaps I should have taken angry or even militant steps, both when I was in the agency or after I left it," she testified, "but I must confess to the world that the course that I took seemed the better, as well as the easier, approach." Easier is indisputable; Clarence Thomas was a powerful man. But why *better*? "I was aware . . . that telling at any point in my career could adversely affect my future career. And I did not want, early on, to burn all the bridges to the EEOC."

In other words, Hill did what men have been doing since Peter denied Jesus in a Jerusalem courtyard: compromising personal principle to promote immediate self-interest. But at least Peter feared for his life. Hill feared for her career. Like thousands of corporate technicians before her—Bill Moyers to LBJ, Michael Deaver to Ronald Reagan, Pete Williams to Dick Cheney—she had hitched her wagon early to a star, and as Thomas grew increasingly influential, no mere personal humiliation would keep her from exploiting that connection, both in government and outside it. As the phone logs indicate, Hill used her personal relationship with Thomas repeatedly over the years—for references, for assistance in getting a grant, for networking. In discussions about Thomas with colleagues, she lauded his performance. "[O]ne of the things that I have said was that I intended to—I hoped to keep a cordial professional relationship with that individual," testified Hill. One reason, she explained, "was a sense that I could not afford to antagonize a person in such a high position." While Hill repeatedly denied that she attempted to benefit from Thomas's patronage, it's pretty hard not to suspect that, out there in the hinterlands, the ability to snag the head of the EEOC for a civil rights conference or a personal reference might be worth a few professional miles.

That doesn't, of course, make Hill a scoundrel. It just doesn't make her very brave. Indeed, it was only after her connection to Thomas had been exploited—after she had secured tenure at the University of Oklahoma Law School and success in her own right—that she began to view coming forward as a legitimate option. When Hill was asked by the Judiciary Committee why she had finally decided to speak out, her response was resoundingly devoid of the sense of principle women now attempt to impose on her actions. She came forward, Hill explained, because "my career is on solid ground."

If the intervening decade of deracination seemed an eminently acceptable compromise to Hill, she was not alone in her assessment. "I think that is something that a woman in that situation would do," Hill's friend Ellen Wells observed in her corroborating testimony. "You think, yes, perhaps this job is secure," she later elaborated, "but maybe they will post me in an office in a corner with a telephone and *The Washington Post* to read from nine to five, and that won't get me anywhere. So you are quiet and you are ashamed and you sit there and you take it."

The mass recognition triggered by Hill's testimony only confirmed Wells's sad assertion. Millions of women, from Nina Totenberg to Wanda Baucus to Dennis DeConcini's mother, it seemed, had been ashamed, sitting there, taking it. "Who wants to be a feminist martyr," snapped a friend who made exactly Hill's choice. "You'd do the same thing." Perhaps. And clearly, Hill's embrace of the "easier" solution was a forgivable, human response to an extremely stressful situation. Nevertheless, compromise in the pursuit of professional success often has a secondary moral cost—an abstraction made perfectly concrete in the Thomas-Hill relationship.

Much has been made of Thomas's role as the head of the EEOC. How appalling, opponents

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rightfully noted, that the ultimate advocate of American civil rights might have been a vulgar violator of the same. And indeed, Thomas, if guilty of such crass intimidation, should be expelled from public life. But Hill had a public obligation too. As a black woman, she knew better than most people how pervasive and insidious discrimination can be. As a lawyer, she fully understood her rights. As an employee of the EEOC, she was a prominent cog in the agency assigned to encourage coming forward, speaking out, ending the stigma, and ultimately the practice, of sexual abuse. And, finally, as a heavily and conventionally credentialed professional, she had far more public credibility (and career options, if worse came to worst) than thousands of housekeepers, clerks, and secretaries subjected to similar outrage. In other words, she was well positioned to make a stand for women everywhere (and especially in Thomas's office). Yet she withheld information the public should have known in order to retain her patron and, thus, her career.

In accordance with her "best judgment," Anita Hill asked for no help when she was victimized. She didn't give any help, either.

"I can only say that when I made the decision to just withdraw from the situation . . . that I may have shirked a duty, a responsibility that I had," admitted Hill at one point—only one point—during her testimony. "[B]ut that was my best judgment at the time." Forget Sojourner Truth; Ron Ziegler or Robert Gates might be more apt comparisons.

Like most other corporate conformists, Hill confronted a Hobson's choice. If she had come forward in 1982, she would've faced the firestorm: a neophyte accusing a prominent black Republican, a rare and heavily protected species. She might have lost her livelihood, derailed her promising career. She might well have been a martyr. But what her supporters elide is that Hill could have made that choice—as did Rosa Parks, who risked her job as a seamstress and even her life to stand up (or sit down) for her rights. Still, you don't have to dust off ancient icons to find examples of feminine courage. Consider the not noticeably hagiographic Dawn Ceol, a journalist who also confronted the moral crucible during the Thomas hearings.

The weekend Hill testified, Ceol was covering the chaos for *The Washington Times*. That Sunday night, John Doggett, a man whose insight into Hill's motives was gleaned from "intuition," "body language," and other rigid psychological tests, testified to her tendency to fantasize. Ceol wrote her story, giving Doggett's theory past-the-jump placement. She awoke the next morning to find the original headline—"THOMAS ACCUSER LAUDED, ASSAILED"—transformed to "MISS HILL PAINTED AS 'FANTASIZER,' " and the lead rewritten to legitimize Doggett's conclusions. Like Hill, Ceol felt her integrity had been affronted and the public misled. Like Hill, she understood that the professional cost of following her conscience would be considerable, especially in the current, abysmal market for journalists. She quit her job that day.

In today's ethical cosmos, the prudent Anita Hill, not the impulsive Dawn Ceol, is the model: a woman who subsumed integrity for the "greater good" of professional achievement—who did, in short, what ambitious men have often done. The trouble was, she forsook what women have often claimed to have: a fundamental sense of their larger moral responsibility.

Sole sisters

In the 16th century, Baldesar Castiglione issued the prototype of 20th-century America's corporate how-to: careful instructions for courtiers seeking success in the Renaissance's vicious royal circles. "Even if it goes against his nature," Castiglione lectured, the savvy courtier "has the discretion to discern what pleases his prince, and the wit and judgment to act accordingly, and the considered resolve to make himself like what he may instinctively dislike."

What was known as superior servitude in the Renaissance rat race, modern man called playing the corporate game: winning friends and influencing people as a means to financial success. This "outer-directed man," as Harvard sociologist David Riesman observed in the fifties, understood that he must tailor his behavior, indeed his very character, to win the winks and nods of the corporate powers that might reward him. It was a conformity many educated women treated with healthy skepticism even as they entered the workforce in droves during and after World War II. We do not, said Simone de Beauvoir archly, "confuse the idea of private interest with that of happiness,"

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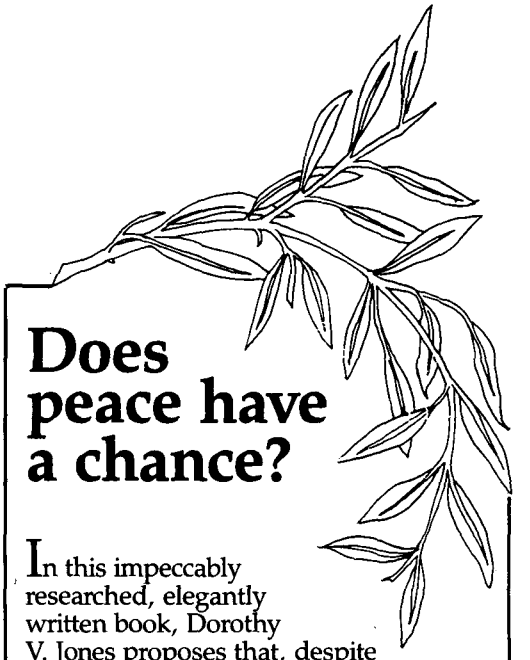
and social scientists tended to agree. While women obviously had no monopoly on integrity (everybody knows a few real-life Lady Macbeths), writers from Freud to Carol Gilligan noted that the average woman tended to weigh her choices—in relationships, daily life, work—in a context far broader than the rewards they brought her personally. Just getting yours wasn't enough. You generally wanted the people around you to get theirs too—even if it meant you had to give a little away.

Of course, when women were at home raising families, that moral acuity seemed well and good for the world. In Edward Erikson's view, the "mother variable"—the compassion and humanity of women—gave them the power not just to mitigate the impersonal tendencies of corporate man but to prevent the nuclear destruction of the planet. To countless sixties feminists, it was the linchpin of peaceful oneworldism. But to a new generation of working women, that eternal difference was about as useful as a gold-plated Hoover. A remarkable amplitude of empathy, women discovered, had remarkably little market value.

"It is obvious," Virginia Woolf once wrote, "that the values of women differ very often from the values which have been made by the other sex." It is equally obvious, she added, that "it is the masculine values that prevail." She might have been speaking of the Fortune 500 in the eighties. As women began hitting the glass ceiling en masse, it became increasingly clear that the corporate world wasn't suddenly going to start valuing compassion over killer instinct. It was also clear that women's competitiveness in the workforce had become an issue not of "personal fulfillment" but of economic necessity. By the mid-seventies, real wages began to decline and traditional wage earners found it more and more difficult to support families on a single income. There was little time for quasi-Marxist social transformations. Women, not the corporate world, would have to do the changing. Thus, two decades after Riesman chronicled the moral poverty of the corporate poltroon, faux-feminist magazines began appropriating for their sex the brownnosing and venal chicanery that men had so long mastered. "[S]tructurally speaking, your boss has life-and-death power over you," cautioned *Games Mother Never Taught You*, a late-seventies bestseller. "There is no way you can leapfrog, bypass, overrule, ignore, challenge, disobey, or criticize your boss and not get penalized in the game."

By the time Anita Hill and millions of other women entered the workforce in the early eighties, dozens of such manuals for women were on the market. While some books, like Marilyn Loden's *Feminine Leadership*, noted that in the long run, female



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climbers would achieve power and "humanize" corporate culture, it was perfectly clear what had to come first. *Games Mother Never Taught You* ordered ambitious women to stop their lousy habit of "helping everyone but themselves" and "learn to act more like a man." To make the dog-eat-dog ethic more palatable, advised another early-coronary manual, *The Right Moves*, "eliminate the notion that the people with whom you work are your friends"—advice Anita Hill apparently took to heart in keeping her silence.

For once, the materialist creed of the paperback dovetailed with more sophisticated feminist thinking. The fact that men remained the gatekeepers of the professional world was one of the great barriers to equal opportunity. Thus women who refused to compete weren't just abandoning their own chances for professional success, they were lessening the likelihood that their "sisters" would be able to achieve it, too. Hence one of *Ms.* magazine's chief functions in the seventies was to celebrate women who had unnicely accrued professional success. The message was, from all angles, pretty clear. Women's characteristic predilection toward empathy—the quality that pre-Thatcherite peaceniks had promised would foster world harmony—was, in the new cosmology, a self-destructive vice.

By the end of the eighties, the rhetoric had softened, but that didn't mean women weren't still kissing ass and popping Rolaids—or that the corporate world had changed enough that they didn't have to. Only 2 percent more were in professional specialties in 1988 than in 1973. College educated women still earned only 59 cents for every dollar made by men—a ratio that had held for 25 years. Women were also 50 percent more likely to live below the poverty line. But their aspirations hadn't budged. The number of women leaving "nurturing" professions like teaching and social work to pursue law and business degrees skyrocketed in the eighties. And once in the workforce, they weren't noticeably easing up. When Felice Schwartz concocted the Mommy Track, the real story was how few professional women wanted to get on it. And last year, *Mademoiselle* magazine looked with bewilderment at descriptions of the nineties as a more relaxed, less careerist decade. Not for today's women, thank you. In the new feminist ethic of "work machismo"—14-hour workdays, ruthless competition—"pulling all-nighters has become a status symbol (again)."

What are they staying up all night *for*? In these baedeckers of corporate mastery, issues larger than securing the boss's approval—standing up for one's beliefs, showing compassion to others, even turning out a socially worthwhile product—don't come up too often, which is probably just as well, considering the values advocated when they do. One recent how-to, *Taking Stock*, advises women subjected to sexual harassment to threaten reporting it (but not to *actually* report it) only as a last resort. Still, before you do, girls, consider this: "It will also destroy the possibility that your career objectives will get any support from him."

"I mean, my goodness gracious," burst Ellen Wells, explaining why she didn't advise Hill to go forward. "You can open up any women's magazine and you can go to seminars on how women are supposed to learn to network since we don't have the Old Boys Club. Take up tennis! Take up golf, ladies! Learn to get out there so you can do these things to maintain your contacts. And so you don't burn your bridges." There's a vast degree of difference between golf games and criminal sexual harassment, but the continuum is real. Many of us are trying desperately, in Castiglione's phrase, to like what we instinctively dislike. And that self-denial may seem to the average modern woman a reasonable price to pay for self-promotion.

Our right to choose

As Anita Hill's life suggests, such pragmatism tends to pay off decently. If she's not the brightest star from Yale Law's class of '83, at a relatively young age she has achieved tenure and status at a large law school—an accomplishment that, had she solicited notoriety as a whistleblower at 25, might well have been a pipe dream. Instead, as Oklahoma's tenure committee lucubrated over Hill's future, no messy accusations obscured that glistening resume; there were no whispers of "whiner," "lesbian," or "prude." And that soothing conventionality was precisely what the contracts lawyer craved.

Like so many other minorities and women, Hill had accepted the harsh bootstrap ethic of the Reagan era, internalized it, and endured. In accordance with her "best judgment"—her essential conservatism—she asked for no help when she was victimized. She didn't give any help, either. And that's what is lost as professional women affirm the Hill ethic today: respect for women's historical, and critical, tendency to sacrifice personal interest in the name of something larger than self.

To forsake the organization, stand up to the man, and insist that a powerful wrong be corrected—*that* was Anita Hill's alternative back in 1982. Blinded by ambition, she didn't see it. Blinded by our own ambition, we can barely make it out either. And in the long run, that moral myopia may do far more damage to women's interests than the ascendance of one Honorable Clarence Thomas. □

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ON POLITICAL BOOKS

Promiscuous Sects

Why evangelicals are jumping in bed with orthodox Jews—and what it means for America

by Thomas Byrne Edsall

James Davison Hunter has written a brilliant analysis of the divisive, polarizing conflicts over values and morals that have come to shape American politics and American public discourse. *Culture Wars** is a rare book in that it succeeds in both informing the reader and enlarging a debate that has become central not only to politics, but to such fundamental matters as dealings between man and woman, orthodox and secularist, and liberal and conservative. Hunter is a professor of sociology and religious studies at the University of Virginia, and if this deeply inquisitive, fair-minded book reflects the character he brings to the classroom, he must be a marvelous teacher.

Although there are substantial flaws in Hunter's larger conclusions, he has discovered an illuminating way to look at major social trends. His basic argument is that there has been a massive lessening of divisions between religious groups based on "specific doctrinal issues or styles of religious practice." These past splits often pitted upper-class Protestants against working class, ethnic Catholics, placing Elliot Richardson and Tip O'Neill on opposite sides of the fence. Now, however, basic cultural conflicts often flare up within religious denominations: between the orthodox, who are committed to "an external, definable, and transcendent authority," and progressives or secularists, who are committed to a "resymbolization of historic faiths according to the prevailing assumptions of contemporary life."

In today's cultural wars, then, the orthodox Jew may well discover he shares more common ground on critical issues with the evangelical fundamentalist than with the reform Jew or the mainline Episcopalian. Hunter quotes Rabbi Joshua O. Haberman to convey the subtle complexity of the new realignment of moral conflict: "As a Jew, I differ with a variety of Bible-believing Christians on theology, our nation's social agenda, and matters of public policy. I am, at times, repelled by fits of fanaticism and a narrow-minded, rigid dogmatism among fundamentalist extremists. Yet far greater than these differences and objections is the common moral and spiritual frame of reference I share with Christians, including fundamentalists. The Bible gave our nation its moral vision. And today, America's Bible Belt is our safety belt, the enduring guarantee of our fundamental rights and freedoms."

Thomas Byrne Edsall is a political reporter for The Washington Post *and is coauthor with Mary D. Edsall of* Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics.

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* *Culture Wars: The Struggle to Define America.* James Davison Hunter. *Basic, $25.*

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Sleeping with the enemy

The logic of this kind of allegiance on the Right, and its parallel on the Left, gives Hunter a basic framework with which to explain the emergence of ideological-religious alliances lacking denominational coherence that battle each other on major issues ranging from civil rights to judicial appointments. Divisions have emerged that array such groups as the National Organization of Women, the National Education Association, the Union of American Hebrew Congregations, the United Methodist Board of Church and Society, and the ACLU against Agudath Israel, the National Association of Evangelicals, the National Right to Life Committee, and Concerned Women for America.

These divisions, in turn, are helping to shape both liberal-conservative conflicts and Democratic-Republican splits. Surveys of the leadership of the three major denominations—Protestant, Jewish, and Catholic—show that partisan commitment to the GOP or the Democratic Party, as well as liberal or conservative stands on a host of issues from the Equal Rights Amendment to homosexuality, are determined much less by one's religion than by one's commitment to the orthodox or progressive wing of each religion. "The orthodox wings of Protestantism, Catholicism, and Judaism were significantly more likely to condemn premarital sexual relations and cohabitation as 'morally wrong' than each of their progressive counterparts, with similar patterns on pornography and family organization based on the centrality of the father."

Not only were progressives of all faiths far more likely to be Democrats than their orthodox brethren, but the splits between self-identified liberals and conservatives were even more extreme. This orthodox-progressive structuring of ideology and partisanship extends even to foreign policy, with progressives of all three faiths at least twice as likely as their orthodox counterparts to say they had little or no faith "in the ability of the United States to deal wisely with present world problems." Readers of *The Washington Monthly*, who almost assuredly include a disproportionate percentage of secular humanists, may find some comfort in Hunter's research showing that secularists are "the fastest growing community of 'moral conviction' in America." From just 2 percent of the population in 1952, they had grown to 11 percent by the end of the eighties.

Those deeply enmeshed in these ethical-political-ideological battles invariably perceive their adversaries as dangerous moral dictators. "It is these ignorant people, the most uneducated, the most unimaginative, the most unthinking among us, who would make of themselves the guides and leaders of us all; who would force their feeble and childish beliefs on us; who would invade our schools and libraries and homes," was how science fiction writer Isaac Asimov described the Christian Right. Conversely, Morehead Kennedy, former Iranian hostage and foreign service officer, said that in his dealings with liberal religious groups, "I would have [had] a much easier time denying the resurrection than I would have questioning the nuclear freeze."

Moral fibber

The combination of telling quotes, on-target case studies, and historical analysis makes this book an exceptionally good read. But Hunter gets into trouble when he tries to give his material greater meaning than it can carry. Hunter argues that the conflicts he portrays reflect a "fundamental realignment in American culture" in which "[t]he dominant impulse at the present time is toward the polarization of a religiously informed public culture into two relatively distinct moral and ideological camps."

In fact, the battles Hunter describes do not define a full-scale national cultural realignment, because, for one, the participants are struggling over issues most often of interest only to factions of competing elites, not to an engaged larger public. Hunter's misjudgment grows out of the fact that he does not enlarge the sweep of his canvas to show how these orthodox-progressive conflicts form just one part of a much broader set of disputes involving race; the allocation of tax burdens and government expenditures; the struggle for limited resources in the workplace, neighborhood, and school; the loss of a national consensus on the meaning of equality; and the emergence of predominantly black underclass neighborhoods posing inherently divisive, and seemingly insoluble, questions—questions probing the links between such government policies as welfare and food stamps and crime, illegitimacy, decaying family structure, and unemployment.

Many of these moral conflicts are in fact based on disputes over real policies and real resources. Take, for example, the very emergence of the Christian Right. Two of the most important events in the development of a politicized evangelical movement were 1) the desegregation of public schools in the South and 2) the order issued by Democratic IRS Commissioner Jerome Kurtz abolishing the tax exemption for Christian academies. The Christian school movement—the organizational core of the Christian Right—flourished when Southern white parents were desperate to find alternatives to the public school system af-

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ter desegregation. Then, when Kurtz sought to take away the tax exemption for many of these private academies in 1978, the sleeping giant was awakened. "It was the spark that ignited the religious Right's involvement in real politics," noted Richard Viguerie, citing the crucial role the tax fight had in the formation of the Moral Majority.

This example shows that looking at contemporary cultural divisions exclusively through a moral-religious lens is far too limiting to encompass disputes that involve blacks and whites, schools, jobs, equity in the workplace, and searing conflicts over the placement of responsibility for social dysfunction. Hunter's book is a major and welcome contribution to this larger debate, but he and his readers should recognize that the book illuminates only part of a much more complex realignment of the electorate that has continued to evolve since the mid-sixties. □

The Great Divide

Divided government doesn't have to subtract

by Morris Fiorina

With the election of George Bush and a Democratic Congress in 1988, the country was assured of at least 10 consecutive years of divided government, an all-time, still-climbing record. The election results also swelled a trickle of writings about divided government into a good-sized stream, probably because the 1988 outcome indicated that divided government has become a characteristic feature of contemporary American politics and can no longer be viewed as an aberration attributable to contingencies like charismatic Republican presidents (the Eisenhower and Reagan years) and splits in the Democratic Party (the Nixon years).

Many of those who have written about divided government blame it for much of what's wrong with American politics today. James Sundquist of the Brookings Institution, for example, sees little but drift and stalemate under divided governments in comparison to periods when energetic presidents and their legislative majorities adopted major policy initiatives. Reformer Lloyd Cutler lays the chronic budgetary crisis directly at the feet of divided government. Writing in the *William and Mary Law Review*, he observes that "in modern times high deficits have occurred only with divided government. . . . The correlation between unacceptably high deficits and divided government is much too exact to be a coincidence." Professors Benjamin Ginsberg and Martin Shefter argue that divided government, in addition to fostering budgetary and foreign policy disputes, encourages frustrated presidents to go outside the law in order to achieve their aims and frustrated members of Congress to leak secrets and conduct destructive investigations in order to achieve theirs, and contributes to the politicization of the courts, the bureaucracy, and the media.

The critics' arguments are plausible and their examples often striking, but sometimes striking examples do not represent the larger universe of cases. A look at that larger universe suggests that the case against divided government is, to say the least, exaggerated. In *Divided We Govern**, David Mayhew, a Yale political scientist, provides us with a first-rate study of the operation of American government during both unified and divided periods between 1946 and 1990 and finds nothing in the historical record to suggest that periods of divided government are any less productive than periods of unified control. Through exhaustive reviews, Mayhew identifies 267 instances of "significant" legislation—defined as such in newspaper accounts of the time or by later policy studies. Surprisingly, unified governments have been no more likely to produce significant legislation than divided governments. Rather, "if all 267 laws are counted equally, the nine 'unified' two-year segments average 12.8 acts and the 13 'divided' segments average 11.7. The difference is trivial, and since the eighties were all 'divided,' that decade's shift to the use of omnibus budgetary measures can probably account for it, so to speak, entirely." In light of Mayhew's findings, one wonders what universe of cases Cutler was examining when he claimed that "almost every important domestic program in this

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**Divided We Govern.* David Mayhew. *Yale University Press, $25.*

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country that has been carried through the Congress has been carried through at a time of party government rather than divided government."

Moreover, Mayhew finds that divided control does not lead to more instances of congressional investigation of the executive branch. Indeed, some of the most far-reaching and damaging investigations (such as those of Senator Joe McCarthy) took place under unified governments. Contemporary commentators regularly cite the Watergate experience while overlooking the post-World War II Red Scare; the congressional hearings on internal subversion that began in 1948 and extended to 1954 took place mostly under unified control. Proceeding systematically, Mayhew defines a major investigation as one revolving around a committee-based charge (or response thereto) of misbehavior by the executive branch that received front-page coverage by *The New York Times* on at least 20 days. Overall, 15 major investigations took place during the 18 years of unified control, while 14 major investigations took place during the 20 years of divided control, hardly the kind of picture the charges of some commentators would lead us to expect.

Imperfect unions

Mayhew's tabulations and analysis are, quite simply, unimpeachable. But there are three arguments that critics of divided government might employ to avoid accepting his conclusion. Most obviously, Mayhew does not attempt to measure the worth or effectiveness of the legislation. Thus, "good" legislation produced by a unified government is weighed the same as "poor" legislation produced by a divided government, so long as both are judged significant. For example, Mayhew counts the 1982 St. Germain Depository Institutions Act, which unleashed savings and loans and certainly contributed to the S&L debacle, as a major piece of legislation. But to anyone who objects to that judgment, Mayhew responds that they should likewise discount the Depository Institutions and Monetary Control Act of 1980, which contributed to the S&L mess by raising the ceiling on thrift interest rates and federal deposit insurance. Evidently, divided governments have no monopoly on "bad" legislation. And, replying to anticipated criticism with the same kind of striking example on which critics base their arguments, Mayhew wryly observes that a unified government was responsible for the 1930 Smoot-Hawley tariff, "which, from the standpoint of the world economy, may have been the most unfortunate statute enacted by the U.S. government during the 20th century."

A second line of attack might focus on the implicit baseline of Mayhew's study—that a divided government that produces as much legislation as a unified government is functioning equally well. Essentially, Mayhew has studied the *supply* of federal legislation and found that supply is more or less the same during unified and divided periods. But we have no information about the *demand* for legislation. If unified and divided government periods are characterized by different levels of demand, then they would need to supply different amounts of legislation in order to be operating equally well. Divided government is concentrated during some of the more troubled eras of our political history: 1840–1860, 1874–1896, 1968–1992. Some commentators may believe that such eras demand *more* by way of appropriate government response than unified eras; if so, supplying only the same amount of response as in unified eras would indicate that government response is unsatisfactory relative to that in unified eras. This is a somewhat abstruse argument, and critics of divided government should probably not take a great deal of comfort in it, for one could also argue the opposite point of view: If divided government reflects deep divisions and a lack of consensus in the society, then perhaps government should supply less rather than more legislation in divided periods than in more consensual unified periods.

Finally, critics of divided government might charge that even if divided governments accomplish as much as unified ones, it is harder for them to do so. Partisan conflict is greater, more time and other resources are required, and every outcome must be a painfully negotiated compromise. The political game is simply more costly and less fun to play. There is undoubtedly some truth to this argument, but once again there are counterarguments. Maybe incremental compromises are the best that we can do in some areas. Would most Americans today prefer (as do Sundquist and Cutler) that a liberal Democratic Party or conservative Republican Party be able to impose its particular vision on the whole society? The polls say no. Is it such a bad thing that legislation gets negotiated provision by provision rather than quietly gliding through with the endorsement of a congressional committee and its interest-group constituency? And is it such a bad thing that presidential appointments get a thorough going-over rather than a rubber stamp?

Thus, there is still some room for argument, but Mayhew has certainly reduced the area in which such arguments can take place. Because of considerations like those raised here, his study may not convince all the critics of divided government, but at the very least it suggests that their criticisms are much more exaggerated and more problematic than they appear.

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Why should unified or divided control seem to make so little difference? The arguments of the critics seem eminently plausible. How come they don't hold in practice? Mayhew discusses a range of considerations that may lead to comparable or even greater levels of activity under divided conditions than unified conditions. Perhaps most importantly, divided control does not do away with the competition for political credit between and among parties and officeholders; indeed, it may enhance it. The expansion of Social Security benefits and coverage in the early seventies was stimulated by the competition for credit between President Nixon and the Democratic Congress. Similarly, the Clean Air Act of 1970 emerged stronger than anticipated because of the one-upsmanship that went on between Nixon and Senator Edmund Muskie, the responsible committee chair and a Democratic presidential aspirant. The Economic Recovery Act of 1981 was the result of a bidding war between President Reagan and House Democrats. Sure, it was lousy public policy, but if it's action you want, divided government can provide it.

Not only do the parties and their candidates have a mutual interest in accomplishments for which they can claim credit, but they have a mutual interest in avoiding blame. The passage of the 1986 Tax Reform Act is widely applauded and not well understood, but at least part of the explanation seems to be that neither party wished to bear responsibility for allowing the legislation to fail. It is tempting to conclude that when a popular consensus behind public policy exists, divided government will not stand in its way; it may even facilitate action. While neither party can accomplish everything it wants to in periods of divided government, the struggle for political credit sometimes makes them as likely to compromise on some legislation as to allow the process to stalemate.

Mayhew looks at other considerations as well. Divided control or not, external events such as the launching of Sputnik may require a response. Even under divided conditions, presidents may lead, as did Reagan in 1981. Public "moods" may demand action. I cannot do justice to Mayhew's rich discussion here. Suffice it to say that the behavior of presidents and congresses is a complicated matter, determined by numerous considerations. Divided control is one consideration, but apparently it is overcome by others. However logical and plausible the arguments against it, divided government just does not seem to be the threat to American democracy that its critics make it out to be. □

The Second Resurrection of Richard Nixon

You can't keep a bad man down

by Jules Witcover

Does the country really need another book on Richard M. Nixon? For one who has spent nearly 40 years having Dick Nixon to kick around and has done his share of kicking, the answer at first blush is: enough already. All too familiar are the deception, tastelessness, and shamelessness of this world-class rotter who poisoned American political life for so long, chronicled exhaustively—nay exhaustingly—once again by this author. Who needs to be reminded?

But wait a minute. Like Bram Stoker's prince of darkness, not only is Richard Nixon back, but he no longer fears the daylight. And why should he? Seventeen years after the Watergate stake was driven into his heart, he is casting a shadow again, a very large one, on the foreign-policy consciousness of the country. His transparently self-congratulatory books, his occasional television forays, and his endlessly gratuitous advice to the country that told him to get lost in 1974 are all conspicuous elements in his re-resurrection.

As Ambrose* notes, a whole generation has come of age without a clear remembrance of Nixon's crimes, so maybe another book laying them out in all their squalor would be a public service. Whether this

Jules Witcover is a syndicated columnist and author of The Resurrection of Richard Nixon *(1970).*

* *Nixon: Ruin and Recovery, 1973-1990.* Stephen E. Ambrose. *Simon and Schuster, $27.50.*

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book is the one to perform that service, however, is arguable. On the one hand, it is comprehensively accurate in regurgitating the sordid details of the Watergate cover-up and the aftermath, gleaned tirelessly from the available Watergate transcripts and tapes and relatively few interviews (only 17 in all, an embarrassingly small number for a book of 637 pages) with players major (Bob Haldeman, Chuck Colson, Gerald Ford) and minor (Hugh Sidey, Richard Reeves, William Safire). But its reliance on such written sources as Nixon's own exceedingly self-serving books and one by the even more discredited revisionist Spiro Agnew risks diminishing its overall credibility.

Equally corrosive is the fact that Ambrose, after having presented all of the Nixon obscenities and correctly identifying them as such, falls back on the old everybody-did-it dodge, contending that John F. Kennedy and Lyndon B. Johnson were guilty of all or most of Nixon's crimes but just didn't get caught. While it is true that neither JFK nor LBJ was a choir boy, neither of them systematically subverted the Constitution in the manner of Nixon and his henchmen. The author, while repeatedly and devastatingly spearing Nixon for his lies and evasions, is strangely sympathetic, even idolatrous, toward him on other occasions, to the point of naiveté.

For example, Ambrose buys Nixon's argument in his memoirs that a very damaging quotation from one Watergate tape was inadvertently missing from a transcript Nixon submitted to House investigators. The author writes that "it would have been ridiculous for him to eliminate a passage from the transcripts when it was on one of the tapes that had already been handed over to the committee." Yet Ambrose quotes a world-renowned scholar "in textual criticism and bibliography" who concludes that "throughout recorded history no author has ever produced, albeit unwittingly, a text so systematically debased and corrupt." Ambrose's own chronicle definitively establishes that there was nothing, nothing whatever, that Nixon would not say or do to save his own skin, down to the most patently false contention.

The author professes that summaries of taped conversations between Nixon and White House Counsel John Dean were "skillfully done," though with slight augmentations "that gave an interpretation more favorable to Nixon." He argues as well that the Watergate tapes "were Nixon's best defense . . . for the obvious reason that they contained so many exculpatory statements by Nixon, statements that he had made in his own transparent way whenever he remembered that the recorder was running." But throughout his long career, Nixon has been so transparent in his self-serving actions that it is hard to see how a serious, long-term student of this devious and basically insecure man could conclude that the tapes were Nixon's best defense. The Watergate investigators and eventually the public at large saw through his faking, rendering the tapes utterly self-incriminating.

Ambrose also accepts Nixon's contention that he ended the Vietnam War "with honor" and states that he "brought peace to Vietnam." What he did was withdraw American troops from South Vietnam in a war that during his successor's term saw a humiliating evacuation under fire of the American embassy in Saigon and the overrunning of South Vietnam by North Vietnam. In his conclusions, Ambrose seemingly contradicts himself on Nixon's ending of the war by observing that "if Watergate had never happened and had Nixon stayed in office, he would have been in a better position to extract some funds from Congress" to bolster the Saigon government in 1975.

In a recitation of Nixon's personal financial manipulations—his purchasing property through sweetheart deals with his buddy Bebe Rebozo and others, and his taking a huge income-tax deduction for giving away his vice-presidential papers after backdating the donation to qualify under a then-expired tax regulation—Ambrose writes: "Still, except for the questionable deduction for backdating the vice presidential papers, Nixon had done nothing illegal. It is not against the law to borrow money from your friends. Nor was Nixon the first president to profit from his association with millionaires." Dwight Eisenhower and Lyndon Johnson did it, he notes. "But Nixon was the one who got caught."

Richard nixed

In ways small as well as large, the author provides a primer on the authentic Nixon in the White House for the Rip Van Winkles among us:

➤Sending good wishes to a National Women's Political Caucus meeting while asking domestic policy aide John Ehrlichman: "Is it wise to throw pearls before swine?"

➤Accusing television commentators in an interview of innuendo, leaks, "leers, and sneers," then adding: "which is their perfect right."

➤On learning that there was no Dictabelt recording of a conversation for which a tape was "missing," Nixon suggests: "Why can't we make a new Dictabelt?"

➤Counseling Dean: "Tell the truth. That is the one thing I have told everybody around here. Goddamn it, the truth."

➤Suggesting to Haldeman and Ehrlichman that libel suits be filed against Dean and others, adding: "Use the most vicious libel lawyer there is."

Ah, how it all comes back. Nor did it end when

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Nixon was booted out of the White House, as Ambrose further notes:

➤After assuring Ford he would not go to China before the 1976 election and risk drawing more attention to his pardon, Nixon goes anyway, claiming the Chinese insisted, which the author says Secretary of State Henry Kissinger knew was not true.

➤Commenting on President Ford's observance of the bicentennial, during which he made many speeches, Nixon tells David Eisenhower that his successor should have made one major speech. "He should have said, a week before July Fourth, 'Look, I'm going up to Camp David to work on this speech.' He didn't actually have to work on it. He could go swimming or do anything. Then he could have given it and he could have locked up the nomination right then [and] there. Or am I wrong?"

➤Telling interviewer David Frost of aides Haldeman and Ehrlichman, whom he fired to deflect criticism from himself, "I can be faulted because I defended them too long. Maybe I tried to help them too much."

In other words, the same old Dick Nixon is still with us in all his disingenuousness. Yet Ambrose sees a new Nixon (what, another one?) in his candor, in telling another interviewer that while his comeback "has not been a deliberate program," he knows "Americans are crazy about renewal . . . because they say, 'What makes this guy tick?' They see me and they think, 'He's come back' or 'He's risen from the dead.'" Nixon's most "candid" moments, in fact, have come in his unintentional revelations about himself in such self-aggrandizing books as *Six Crises* and his more recent, rambling, and oft-times sophomoric *In the Arena*. He has never been able to resist explaining his own deviousness, apparently believing that doing so will make him appear all the more clever. If Ambrose is contending that there is much new about the surviving Nixon, he is not convincing.

The most valuable part of this book, nevertheless, is the chronicling of Nixon's return from the political dead, in which Ambrose lays out the very calculation Nixon denies. He traces the comeback from Nixon's seeking safe turf in China and Kentucky for his post-Elba coming out, to the successful way in which he has insinuated himself into the nation's foreign policy dialogue—sometimes right, as when he observed in 1988 that "Eastern Europe today is ripe for positive peaceful change," and sometimes wrong, as when he predicted "the Soviet Union will do whatever is necessary—including a brutal military invasion—to suppress an insurgency seeking to liberate one of its satellites in Eastern Europe."

In the end, however, while confessing a developing admiration for Nixon in the course of writing this third volume of political biography on the man, Ambrose draws conclusions that should be read by those who think America was the ultimate loser when Nixon resigned. Of these, the author writes: "So many believed him that his version became the standard perception of Watergate. By 1990, people born after 1965 asked of Nixon, 'What did he do that was so terrible?' They had read about Jack Kennedy and the womanizing, Bobby Kennedy and the wiretapping, Lyndon Johnson and his use of the FBI; they had lived through the Reagan administration and Iran-contra; they were living through and paying for the savings and loan scandal. No wonder they wanted to know what Nixon had done that was so terrible."

But Ambrose then renders his final judgment: "Nixon will never be called Richard the Great. He was a sometimes brilliant, frequently successful, often flawed leader, but never a great leader." He notes that Nixon, in writing of the true leaders he has known, noted that, of all their admirable qualities, "virtue was not one of them." In this, Ambrose says, Nixon was dead wrong. Citing Heraclitus's observation that "a man's character is his fate," Ambrose says that Nixon "had nearly every gift that the gods could bestow. The one that he most lacked was character. Virtue comes from character. That is why Nixon despised virtue, and railed against it."

Power to Nixon, Ambrose writes, "was manipulation, inside information, polls, favors, trade-offs, bribes, public relations, smears, and intimidation. Power was publicity rather than policy. Had Nixon engaged in public debate, education, and persuasion, he could have been a great president. As it is, he doesn't even rate as a good one. He is the only president who resigned his office, the only one forced to accept a pardon for his deeds. This will never be forgotten. Two hundred years from now he will get only a paragraph or two in a high school American history text, and the first sentence will begin: 'Richard Nixon, 37th president, resigned his office because of the Watergate scandal.'"

That may be so, thus rendering wasted all of Nixon's relentless efforts to rewrite history. But the contemporary re-resurrection goes on, and don't be surprised if the Count Dracula of the Republican Party is back in the sunlight of forgiveness and acceptance at the GOP national convention in Houston next August. This prospect alone justifies the retelling of why Nixon was forced from office 17 years ago, and how he has come once again to haunt us. According to Ambrose, longtime Republican wise man Bryce Harlow once observed that if Nixon "ever had a heart attack, he would breathe into his own mouth and resuscitate himself." Who, after all this, can doubt it? □

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POLITICAL BOOKNOTES

In Search of Excess: The Overcompensation of the American Executive. Graef S. Crystal. *Norton, $19.95*. As the smoke clears on the eighties, Drexel's Michael Milken is walking the big yard and Salomon's John Gutfreund is deposed. Greed, however, is free and thriving. And Crystal, a Berkeley professor, has written an important book on businessmen whose money lust remains unchecked.

Last year, Time Warner Inc.'s chairman, Steven Ross, got a cool $78 million after Time Inc. took over his company. Occidental Petroleum's Armand Hammer did nearly as well even after he kicked the bucket. Stockholders are now stuck paying the remainder of his $18.3 million contract to his heirs. But while these two are among the most famous examples of CEOs scarfing up unfathomable millions, Crystal, once a compensation consultant himself, argues that the abuses they represent have become institutionalized. In his painstaking survey of 200 major companies, Crystal found that the average total direct compensation for those CEOs is $2.8 million. Take out the extraordinarily big earners like Ross, and the number still comes to $2.4 million.

As with any management issue, there is a crucial, tedious question: What about Japan? According to Crystal, $2.4 million is seven times more than major Japanese companies pay their CEOs. This is not pretty. Perhaps it is time for Chrysler's Lee Iacocca (a beneficiary of more than $43 million in stock-option gains over the past six years) to give his need-to-stay-competitive stump speech to his fellow CEOs.

Talented CEOs should be well paid. And in contrast to Japan, the American ethos is to reward individual achievement. Even so, looking at the nation's numbers through the lens of history shows something has gone haywire. Plato once told Aristotle that no one should earn more than five times the pay of the lowest-paid worker in the community; J.P. Morgan updated the ratio, but held to the maxim, paying his chief executive officers no more than 20 times the lowliest worker. Today, however, a typical U.S. CEO earns a whopping 129 times the wages of the average manufacturing worker—about 150 times if the service industry is put in the mix. What is more astounding is the fact that this figure is up from a comparatively sane factor of 35 in 1974. (Japan? CEOs earn 16 times the average prole's wage. Germany? Twenty.)

Although this book is no page turner, Crystal reveals a compensation system that over the years grew increasingly rigged, greased, and wired. Once upon a time, compensation packages were determined by salary and stock options, which were designed to provide long-term incentives. Stock options make sense, linking executive pay to what matters to shareholders. But in the depressed bear market of the seventies, many a chairman decided that the problem was that no one on Wall Street really knew how to value equity securities. Why should they suffer because their stock prices were inaccurately low?

This thinking, Crystal explains, gave rise to a curious hired gun called the outside compensation consultant. With the help of these consultants, many CEOs jettisoned the idea that their performance should be tied to the market price of their stock, choosing instead to base pay demands on surveys of the loot their brethren at comparable companies pulled in. Crystal points out that this gives CEOs something of a stacked deck, since, for example, Nissan is not factored into the Big Three auto manufacturing comparisons. Studies are also made of every conceivable indi-

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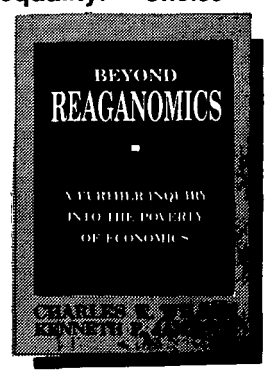

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cator of a company's health, from earnings per share growth to cash flow, in order to justify a CEO's salary. There's restricted stock, a basically free share given to executives, and reload-option features, which guarantee the highest possible price for option shares. The latter is a nice safety net, given that, as Crystal points out, a CEO's knowledge of his company's long-term health amounts to insider trading on stock option plans.

After the consultant, who is beholden to the chairman, picks a number, the findings go to the generally friendly board of directors. In some cases, CEOs sit on one another's boards. Even *Forbes* magazine, a perennial defender of greed, recently questioned this practice, asking if such "strange boardfellows" can fairly represent shareholders on pay issues.

While companies should pay the big bucks to hang on to effective managers, it's not exactly an arms-length negotiation when Steve Ross tells his insider-stuffed board that he desperately wants to hold on to Steve Ross. And insulation from any kind of risk has led to an alarming gap between some CEOs' pay and their companies' performance. For example, Stephen Wolf, the head of United Airlines, reportedly earned $18.3 million last year, as the airline's stock fell by 71 percent.

Crystal reports that there are CEOs who like to compare the pittance they make to the earnings of a Jack Nicholson or a Jose Canseco. But movie stars have to make blockbusters and athletes have to win to keep pulling in superstar salaries. In those cases, performance is still linked to pay. Crystal tells the story about a year when Herbert Hoover made $75,000 and Babe Ruth made $80,000. Why should a ball player make more than a president? Ruth had the right answer: "I had a better year than he did."

—*Mary Billard*

See How They Ran: The Changing Role of the Presidential Candidate. Gil Troy. *Free Press, $22.95.* Believe it or not, there was a time when presidential candidates didn't "run" but rather "stood" for office. Instead of mounting a traveling air show that hit three media markets per day, they wrote lengthy letters outlining their policies, views, and intentions. In those quaint days, the debate was not how to inject "substance" into campaigns, but how "seemly" it was for candidates to go out on the campaign trail and stump at all.

Fast forward to 1988: Willie Horton and flag burning; handlers and photo opportunities. The use of soundbites, polls, and negative advertising, pundits say, have conspired to "trivialize American democracy." Alexis de Tocqueville's fears that the American government would become one "grand electioneering machine" have finally come true.

Not so fast, says Gil Troy, a McGill University history professor who examines how presidential candidates have behaved over the past 200 years. The remarkably sophisticated road shows that today pass for political campaigns are not a harbinger of America's decline, according to Troy. Instead, they're just the latest chapter in a longstanding struggle "to develop a popular and legitimate protocol for electing a president."

Since the first truly popular presidential campaign, when President Martin Van Buren battled for reelection against William Harrison in 1840, Americans have found campaigns "too lengthy, too costly, too nasty, and too silly," Troy writes. Then, as now, the agenda was simple: Get elected. Then, as now, Americans wanted candidates to discuss issues that would shape the nation. Then, as now, candidates maneuvered to avoid being pinned down. In 1860, William Cullen Bryant, an advisor to Abraham Lincoln, cautioned: "Make no speeches, write no letters as a candidate, enter into no pledges, make no promises." Lincoln replied, "I appreciate the danger against which you would guard me." And he took the advice.

As for the new insidiousness of photo ops and soundbites? In 1924, Calvin Coolidge's campaign spent $120,000 for a series of "nonpartisan" radio addresses over 500 stations, supplementing them with choreographed images of the candidate chopping trees and pitching hay. Nor was 1988 unique in campaign history for its negativity. In 1884, rumors circulated that Republican candidate James G. Blaine had fathered an illegitimate son. In 1912, an embittered William Howard Taft and Theodore Roosevelt described each other in such lofty terms as "puzzlewit," "fathead," "egotist," and "demagogue."

History amply suggests that the American voter's dissatisfaction has a cause far deeper than contemporary technological dislocation. The real problem stems neither from flaws in American political or cultural structure, nor shallow candidates and venal consultants. Rather, Troy argues, Americans find themselves in this jam because of a fundamental conflict the Founding Fathers failed to resolve: whether we are a democracy ruled by popular opinion or a democracy guided by a republican elite who "know best." Troy writes, "Shall the president be a king or a prime minister, the most virtuous man or the most representative one?" Because the presidency melds the ceremony of a king with the pragmatic politics of a prime minister, candidates struggle to be both *of* the people and *above* them—a truth that's brought countless upperclass patricians posing with pork rinds. Thus, 1988's numbing and "superficial" focus on character was not a disturbing aberration, Troy writes, but "a return to the Founding Fathers' republican notion that good character was the most important requirement for a good president."

So the nation has seen it all before. Does that mean that we're doomed to an endless loop of bad video replays? Troy argues that there was, in fact, a golden age of campaigning, the period from 1896 to 1944. The "Campaign Special," rumbling through America morning, noon, and night, displayed the nominees in unguarded moments, be it Charles Hughes running to catch his own campaign train or Al Smith greeting early risers in his pajamas. And while most of the rear-platform rituals highlighted the candidates' personalities, their schedules were built around a series of policy addresses.

Could we return to such a "golden age?" To those of us who slogged across America with the candidates in 1988, the prospects look dim. At a Harvard postmortem of that campaign, Roger Ailes, Ed Rollins, and

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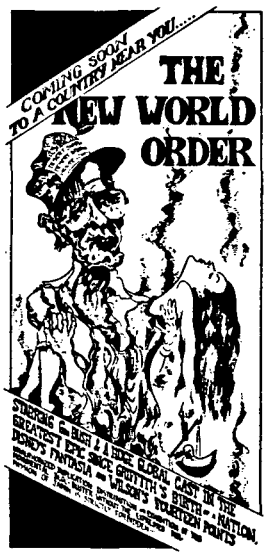

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other strategists together pondered ways to improve the process: change campaign finance laws, close polls at the same time, change media coverage, change debate formats, and so on. All well and good, but would the strategists change *their* ways, too? Ed Rollins summed up the consensus: "I think until such a time as [the American public] rejects the negative commercials . . . and says 'What is it that you're all about?' and 'What is it that you're going to do when you are leading this country?', the campaign manager is going to continue to do what he has to do to win."

Which leads us back to the ultimate players in America's presidential campaigns: the voters. Soundbites, choreographed photo ops, and the Willie Horton school of advertising have existed so long because we respond to them. Abolish faxes, staged events, and high-powered image-makers, and we've still got the culture that made William McKinley preen for the cameras on his front porch in Canton, Ohio.

—*Ann Grimes*

Mystic Chords of Memory: The Transformation of Tradition in American Culture. Michael Kammen. *Knopf, $40*. Tradition is a good thing. But to what extent is it an *American* thing? That sounds like a timely question, what with the ongoing debate over multiculturalism and the rewriting of history curricula. In fact, as Kammen makes plain, it's also an old question—one with a lengthy (and wonderfully tangled) provenance. From Huck Finn lighting out for the Territory to the huddled masses washing up on Ellis Island, America has been the great good place for escaping the dead hand of the past. Yet at the same time, it's hard to think of another country that has made such a fuss over its heritage and symbols—the red-white-and-blue hand of the past. (Remember the flag-burning amendment?) So, while Americans may not be prisoners of the past, we certainly have been cheerleaders for it. Like Ronald Reagan, the archetypal American traditionalist, we tend to cherish the past but rarely get our facts right. As Kammen ruefully notes, we are a people with "splendid memories and star-spangled amnesia."

How did Americans come to acquire a historical consciousness, and once acquired, how has it evolved? It wasn't until well into the 19th century that we gave much sign of putting a civic value on the "past." In 1816, for example, the Pennsylvania legislature wanted to help finance the new state capitol in Harrisburg by selling Independence Hall for $150,000. Even as late as 1904, the Alamo had to be purchased by a private citizen to protect it from destruction. Indeed, one of the central (and surprising) aspects of how we as a nation have responded to our national heritage is that not until the thirties did government—rather than individual citizens or private groups—emerge as the driving force in historic preservation. This was almost entirely owing to the New Deal.

FDR was fond of quoting a remark of Justice Oliver Wendell Holmes: "We live by symbols." Those symbols could be as abstract as a national anthem (something America did not possess until 1931), as concrete as Colonial Williamsburg (the renovation and marketing of which Kammen devotes considerable space to), or as extended as the Civil War centennial ("one of the oddest, most prolonged, and often strained commemorations in American memory"). Yet Kammen surveys much more than such prominent instances of venerating (and sometimes ignoring) our past. He details, for example, the growth of tourism, as well as what tourism eroded: regionalism. The national mobility made possible by the automobile broadened people's horizons beyond the regional concerns that had previously dominated historical awareness. At the same time, as they were instructed to "See America First" (a slogan coined by California booster Charles Lummis), Americans created a demand for more to see. As a result, in the 60 years between 1895 and 1955, the number of historic houses increased from 20 to over 1,000

Kammen, a Pulitzer Prize-winning historian who teaches at Cornell, brings great resources to his study. *Mystic Chords of Memory* draws on political, intellectual, and social history—even art history (the book is profusely illustrated). He clearly has great gusto for his subject, which is

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something he needs as he follows the intermittent course of American pastness from the early 19th century to the present. Yet that gusto cannot conceal certain shortcomings. Kammen's use of such jargon and slang as "tradition orientation" and "people with clout" is jarring. More significantly, this book is both far too long and nowhere near long enough. It's far too long in that its central themes—how myth emerges from memory, the essential dualism of the way Americans view history, the ideological uses (and abuses) of myth and memory—get submerged in the many, often fascinating examples of how we have perceived our past. But Kammen's material is so rich that the three or four instances he may give of a particular trend or development seem almost arbitrary. That each chapter here might have inspired an entire book by itself is a tribute to Kammen's ambition—but it also lends an overall sketchiness to his work.

Kammen never raises the rousseauean question of a civil religion, but it's implicit in his entire enterprise. Today, neither polity nor piety is doing very well. One way to make people care—politically at least—is to help them understand the past. As Kammen reminds us, "History is not chronology for ordinary folk. It involves a sense of memorable individuals, of pivotal events that caused permanent alterations in a community, of the texture of human relationships where threads are broken and the fabric is subsequently restitched." "History" here isn't so much what happened as how we *choose* to remember what happened. It's the very fact of personal involvement that makes the perception of history on the individual level crucial. It comprises the mystic chords of memory (Lincoln's phrase) that bind us as a nation—what we know in our bones, if not in our heads. The astonishing response to something like *Roots* or Ken Burns's *The Civil War* reminds us how much the past can still galvanize us—and, more to the point, how fluid our sense of the past remains. "It is the *perceptions* of tradition and the *uses* of memory," Kammen writes, "not their mere existence, that ultimately matter."

—*Mark Feeney*

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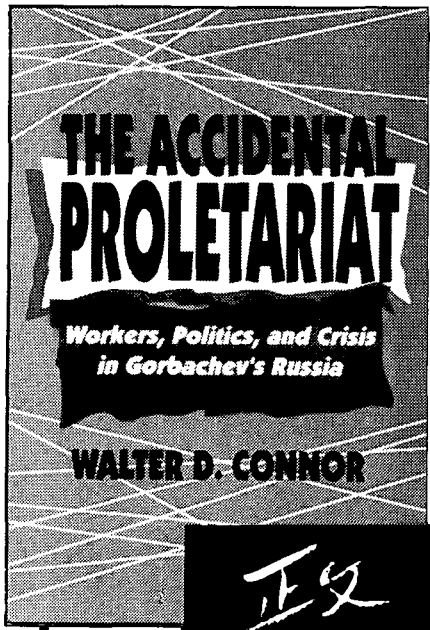

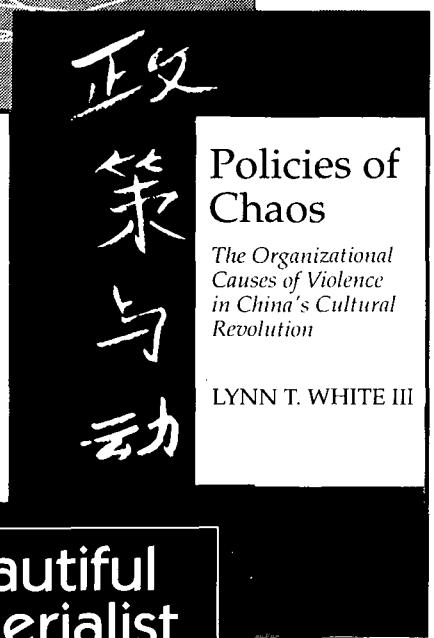

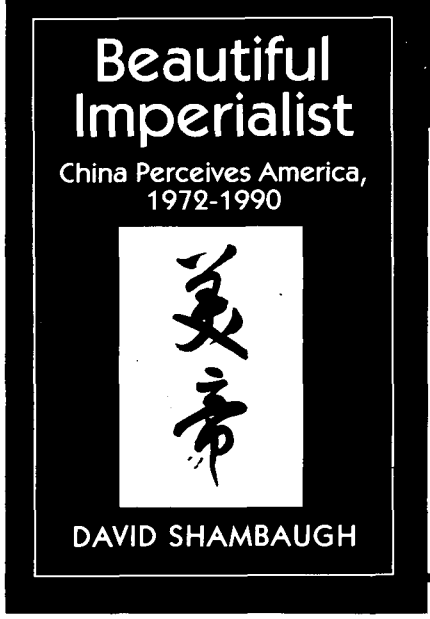

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